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TITLE 5—ADMINISTRATIVE PERSONNEL

Chapter I—Civil Service Commission

PART 6—EXCEPTIONS FROM THE COMPETITIVE SERVICE

FEDERAL SECURITY AGENCY; FREEDMEN'S HOSPITAL

Under authority of § 6.1 (a) of Executive Order 9830, and at the request of the Federal Security Agency, the Commission has determined that positions of pharmaceutical interns should be excepted from the competitive service. Effective upon publication in the FEDERAL REGISTER, § 6.123 (f) (1) is amended to read as follows:

§ 6.123 *Federal Security Agency.* * * *

(f) *Freedmen's Hospital.* (1) NC/PD: Pupil nurses, interns, and externs (medical and dental), student dietitians, resident physicians and pharmaceutical interns.

(R. S. 1753, sec. 2, 22 Stat. 403; 5 U. S. C. 631, 633. E. O. 9830, Feb. 24, 1947, 12 F. R. 1259; 3 CFR 1947 Supp. E. O. 9973, June 28, 1948, 13 F. R. 3600; 3 CFR 1948 Supp.)

UNITED STATES CIVIL SERVICE COMMISSION,
[SEAL] H. B. MITCHELL,
President.

[F. R. Doc. 49-3167; Filed, Apr. 22, 1949; 8:59 a. m.]

PART 22—APPEALS OF PREFERENCE ELIGIBLES UNDER THE VETERANS PREFERENCE ACT OF 1944

MISCELLANEOUS AMENDMENTS

Effective upon publication in the FEDERAL REGISTER, §§ 22.10 (a) and 22.11 (e) are amended as follows:

§ 22.10 *Decision in the Commission—*(a) *By whom made; contents.* The decision on the appeal shall be made by the Chief Law Officer or the regional director, as appropriate, in a finding consisting of an analysis of the evidence, the reasons for the conclusions reached and the recommendation for action to be taken by the employing agency concerned. A recommendation may be made to the employing agency for corrective action, including restoration of the employee to duty retroactively to the effective date of the discharge, suspension for more than 30 days, furlough without pay, or reduction in rank or compensation, as the case may be.

§ 22.11 *Further appeals to the Commissioners.* * * *

(e) *Reopened appeals.* (1) The Commissioners may in their discretion, when in their judgment such action appears warranted by the circumstances, reopen an appeal at the request of the appellant or his designated representative or the employing agency, and may grant a hearing before them. In connection with such appeal, both parties to the proceeding shall be accorded opportunity to make written representations and to participate in any hearing which may be held.

(2) The Commission will reopen cases in which restoration has been recommended on or after August 4, 1947, at the request of the individual concerned, for the purpose of considering the advisability of a supplemental recommendation that the restoration be made retroactively as of the effective date of the discharge, suspension for more than 30 days, furlough without pay, or reduction in rank or compensation, as the case may be. Requests for the reopening of appeals under this subparagraph shall be submitted to that office of the Commission from which the last previous decision on the appeal was received by the appellant. Such requests must be received by the appropriate office of the Commission not later than July 1, 1949.

(Sec. 11, 58 Stat. 390; 5 U. S. C. 860)

NOTE: Because the above amendments make provision for new rights for veterans, the Commission has found that good cause exists for making them effective upon publication in the FEDERAL REGISTER.

UNITED STATES CIVIL SERVICE COMMISSION,
[SEAL] H. B. MITCHELL,
President.

[F. R. Doc. 49-3166; Filed, Apr. 22, 1949; 8:58 a. m.]

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TITLE 6—AGRICULTURAL CREDIT

Chapter II—Rural Electrification Administration, Department of Agriculture

PART 200—PROCEDURES

APPLICATIONS FOR LOANS

Effective April 1, 1949, Part 200 of Title 6, issued September 11, 1946 (11 F. R. 177A—294–296, inclusive), is hereby amended to read as follows:

1. By deleting the last two sentences of paragraph (b) of § 200.1 and substituting therefor a new sentence reading as follows: "If the Administration approves a loan proposal, the applicant is immediately notified, and loan papers are forwarded for the signature of the borrower."

2. By deleting the last sentence of paragraph (b) of § 200.2 and substituting therefor a new sentence reading as follows: "If the Administrator approves a loan proposal, the applicant is immediately notified, and loan papers are forwarded for the signature of the borrower."

(49 Stat. 1363, as amended; 7 U. S. C. and Sup. 901–915)

Issued this 14th day of April 1949.

[SEAL] CLAUDE R. WICKARD, *Administrator.*

[F. R. Doc. 49-3189; Filed, Apr. 22, 1949; 9:03 a. m.]

Chapter IV—Production and Marketing Administration and Commodity Credit Corporation, Department of Agriculture

Subchapter C—Loans, Purchases, and Other Operations

[1949 C. C. C. Flaxseed Bulletin 1]

PART 643—OILSEEDS

SUBPART—1949 TEXAS FLAXSEED PURCHASE PROGRAM

Sec.

643.101 General.
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AUTHORITY: §§ 643.101 to 643.114 issued under sec. 1 (b) Pub. Law 897, 80th Cong., sec. 4 (d) and 5 (a) Pub. Law 806, 80th Cong.

§ 643.101 *General.* As part of the over-all program of Commodity Credit Corporation (hereinafter referred to as CCC) to support the farm price of 1949-crop flaxseed at 90 percent of the parity price as of the beginning of the marketing year (April 1, 1949), CCC, through authorized flaxseed dealers and from the time of harvest through July 31, 1949, will stand ready to make purchases, from eligible producers, of 1949-crop Texas flaxseed grown in the counties and at the prices listed in § 643.104. All such purchases will be made in accordance with this bulletin.

§ 643.102 *Administration.* This program will be administered in the field through the PMA Commodity Office, Dallas, Texas, the Texas State PMA Committee and county agricultural conservation committees (hereinafter referred to as county committees). An eligible producer desiring to sell flaxseed under this program must apply to the county committee of the county in which the flaxseed was produced for written delivery instructions on the quantity of flaxseed he wishes to deliver. Such application must be made sufficiently in advance of the date of the intended delivery to enable the county committee to schedule deliveries in an orderly manner. Delivery instructions issued by the county committee will set forth the approximate quantity of flaxseed and the time and place of delivery to an authorized dealer for the account of CCC. The county committee may authorize in writing certain employees of the county agricultural conservation association to execute on behalf of the committee any forms and documents in connection with this program.

§ 643.103 *Period and area of operation.* This program will be available on eligible flaxseed from harvest through July 31, 1949, in the Texas counties listed in § 643.104. Deliveries of flaxseed to authorized dealers under this program must be completed on or before July 31, 1949.

§ 643.104 *Purchase price in designated counties.* (a) The price per bushel paid for flaxseed, grading U. S. No. 1, delivered under this program to authorized dealers for the account of CCC, shall be as follows in the counties for which this program is authorized:

TEXAS

County	No. 1 flaxseed	County	No. 1 flaxseed
Aransas	$3.48	Karnes	$3.43
Atascosa	3.43	Kleberg	3.44
Bee	3.46	Lavaca	3.42
Bexar	3.41	Lee	3.41
Blanco	3.36	Live Oak	3.45
Caldwell	3.39	Matagorda	3.43
Calhoun	3.42	Medina	3.36
Cameron	3.35	Nueces	3.48
Comal	3.37	Refugio	3.45
DeWitt	3.42	San Patricio	3.49
Goliad	3.43	Travis	3.38
Gonzales	3.40	Victoria	3.43
Guadalupe	3.38	Wharton	3.43
Hays	3.37	Willacy	3.36
Jackson	3.42	Wilson	3.41
Jim Wells	3.45	Zavala	3.31

(b) The purchase price for No. 2 flaxseed shall in all instances be 5 cents per bushel less than the price indicated for No. 1 flaxseed.

(c) The price of $3.69 per bushel will be paid by CCC for No. 1 flaxseed delivered to the Corpus Christi and Houston terminal markets in carload lots which have been shipped by rail on a domestic interstate freight rate basis, from a country shipping point to the said terminal markets, as evidenced by freight bills duly registered for transit privileges and other documents as required herein: *Provided*, That all charges, including receiving charges, have been prepaid, and provided further that, in the event the amount of paid-in freight is insufficient to guarantee the minimum proportional freight rate from the aforesaid terminal markets, there shall be deducted from the applicable terminal purchase price the difference between the amount of freight actually paid in and the amount required to be paid in to guarantee outbound movement at the minimum proportional freight rate. The terminal warehouse receipts must be accompanied by the registered freight bills, or by (1) a statement in the following form signed by the terminal warehouseman, (2) a certificate of such warehouseman containing such an undertaking, or, (3) such other form of certification as may be approved by CCC.

FREIGHT CERTIFICATE FOR TERMINALS

The flaxseed represented by attached warehouse receipt No. _____ was received by rail freight from _____ (Town) _____ (County) _____ (State) point of origin, as evidenced by freight bill described as follows:

Way bill, date _____ No. _____
Car No. _____ Init. _____
Freight bill, date _____ No. _____
Carrier _____ Transit weight _____
Freight rate in _____ Amount collected _____
Number unused transit stops _____

The above-described paid freight bills have been officially registered for transit and will be held in accordance with the provisions of paragraph 19 of the Uniform Grain Storage Agreement.

_____ (Date of signature)

_____ (Terminal warehouseman's signature)

_____ (Address)

Flaxseed delivered at the aforesaid terminal markets by rail in carload lots for which neither registered freight bills nor such freight certificates are presented, will be purchased at the terminal purchase price of $3.69 minus 8 cents per bushel, provided that all charges, including receiving charges, have been prepaid. Flaxseed delivered by truck at the designated terminals in the state of Texas will be purchased by CCC under this program at the applicable county price.

§ 643.105 *Basis of purchase.* Eligible flaxseed will be purchased on the basis of weight and grade. The grade shall be determined in accordance with the Official Grain Standards of the United States for flaxseed, by a grain inspector licensed by the Secretary of Agriculture. Wherever the services of a licensed inspector are not available, the PMA Commodity Office shall designate in writing a person qualified to determine the grade of flaxseed in accordance with the Official Grain Standards of the United States for flaxseed. Such designation may be revoked in writing by the PMA Commodity Office at any time.

§ 643.106 *Eligible producer.* An eligible producer shall be any individual, partnership, association, corporation or other legal entity which (a) has produced the flaxseed in 1949 in one of the counties named in § 643.104 as landowner, landlord, tenant, or sharecropper, and (b) has applied to the appropriate county office for delivery instructions.

§ 643.107 *Eligible flaxseed.* Eligible flaxseed shall meet the following requirements:

(a) The flaxseed must be produced by an eligible producer in 1949 in one of the counties named in § 643.104.

(b) The beneficial interest in the flaxseed must be in the person tendering the flaxseed for purchase and must always have been in him, or must have been in him and a former producer whom he succeeded before the flaxseed was harvested.

(c) The flaxseed must grade No. 1 or No. 2. Flaxseed which contains more than 30 percent damage or more than 11 percent moisture, or which is musty, sour, heating, hot, or which has any commercially objectionable odor or which is otherwise of low quality, is not eligible for purchase.

(d) Sample grade flaxseed will not be purchased under this program.

§ 643.108 *Authorized dealer.* An authorized dealer shall be any individual, partnership, association or corporation operating under an agreement with CCC, which authorizes such dealer to accept delivery of flaxseed under this program for the account of CCC. A list of authorized dealers to whom flaxseed may be delivered for the account of CCC under this program may be obtained from the offices indicated in § 643.102.

§ 643.109 *Purchase documents.* (a) The purchase documents shall consist of the "non-negotiable flaxseed dealer's receipt and grade certificate" issued to the producer by the authorized dealer for flaxseed delivered, the purchase settlement form and such other forms as may be prescribed by CCC.

(b) The receipt must be issued in the name of the producer and must be dated on or before July 31, 1949. The receipt shall indicate the percentage of moisture, the percentage of test weight, the gross weight of flaxseed in pounds, the percentage of dockage, the number of net pounds of clean seed and the grade of flaxseed at time of delivery, and such other information as is required on the receipt form.

§ 643.110 *Determination of quantity.* (a) The number of bushels of flaxseed delivered shall be determined by weight by the dealer at the time of delivery to him. A bushel shall be 56 pounds of flaxseed free of dockage.

(b) The percentage of dockage shall be determined in accordance with the Official Grain Standards of the United States for flaxseed, and the weight of said dockage shall be deducted from the gross weight of the flaxseed in determining the net quantity for purchase.

§ 643.111 *Liens.* The flaxseed must be free and clear of all liens and encumbrances or, if liens and encumbrances exist on the flaxseed, proper waivers must be presented to the county committees at the time of application for delivery instructions.

§ 643.112 *Service fee.* A service fee of one-half cent per bushel or a minimum of $1.50, whichever is greater, shall be charged the producer on each purchase of flaxseed made by CCC under this program. The amount of the fee shall be deducted from the purchase price at the time of settlement.

§ 643.113 *Set-offs.* A producer who is indebted to any Agency or Corporation of the United States Department of Agriculture, or who is listed on the county debt register as indebted to any Agency or Corporation of the United States, shall designate the agency or corporation to which he is indebted as payee of the proceeds of the purchase to the extent of such indebtedness, but not to exceed that portion of the proceeds remaining after deduction of the service fees and amounts due prior lienholders. Indebtedness owing to the CCC shall be given first consideration after claims of prior lienholders.

§ 643.114 *Payments.* Payment to the producer for flaxseed delivered under this program shall be made by the PMA State office through sight drafts drawn on CCC, and on the basis of the purchase documents indicated in § 643.109 subject to the provisions for set-offs and service fees.

Issued this 20th day of April 1949.

[SEAL] HAROLD K. HILL,
Acting Manager,
Commodity Credit Corporation.

Approved:

RALPH S. TRIGG,
President, Commodity
Credit Corporation.

[F. R. Doc. 49-3190; Filed, Apr. 22, 1949; 9:03 a. m.]

TITLE 7—AGRICULTURE

Chapter I—Production and Marketing Administration (Standards, Inspections, Marketing Practices), Department of Agriculture

PART 26—GRAIN STANDARDS

SUBPART—OFFICIAL GRAIN STANDARDS OF THE UNITED STATES FOR SOYBEANS [1]

On April 22, 1947, there was published in the FEDERAL REGISTER (12 F. R. 2573) a notice of proposed amendments of the official grain standards of the United States for soybeans (7 CFR, Part 26), and an invitation was extended to the public to participate in the proposed rule making by submitting written date, views, or arguments, or by presenting their views and opinions orally at hearings which were held in Toledo, Ohio; Peoria, Illinois; Chicago, Illinois; and Cedar Rapids, Iowa. On June 2, 1948, there was published in the FEDERAL REGISTER (13 F. R. 2953) a second notice of proposed amendments of those standards, and a similar invitation was extended to the public to participate in the proposed rule making by submitting written data, views, or arguments, or by presenting their views and opinions at hearings which were held in Toledo, Ohio; Chicago, Illinois; Cedar Rapids, Iowa; and Decatur, Illinois.

From the information received at these hearings and in written submissions, and from other information available in the United States Department of Agriculture, it appears that the official grain standards for soybeans should be revised in order to meet present usages of the trade, including producers, country and terminal handlers, and processors. Accordingly, by virtue of the authority vested in the Secretary of Agriculture by the United States Grain Standards Act of 1916, as amended (39 Stat. 482–485; 54 Stat. 765; 7 U. S. C. 71 et seq.), the following revised official grain standards of the United States for soybeans are fixed and promulgated:

Sec.
26.601 Terms defined.
26.602 Principles governing applications of standards
26.603 Grade requirements.

AUTHORITY: §§ 26.601 to 26.603 issued under sec. 8, 39 Stat. 485; 7 U. S. C. 84. Interpret or apply sec. 2, 39 Stat. 482, 54 Stat. 765; 7 U. S C 74.

[1] The specifications of these standards shall not excuse failure to comply with the provisions of the Federal Food, Drug, and Cosmetic Act (21 U. S. C. 301 et seq.).

§ 26.601 *Terms defined.* For the purposes of the official grain standards of the United States for soybeans:

(a) *Soybeans.* Soybeans shall be any grain which consists of 50 percent or more of threshed soybeans and not more than 10.0 percent of other grains. Threshed soybeans shall be whole or broken soybeans which are not removed in the determination of foreign material.

(b) *Classes.* Soybeans shall be divided into the following five classes: yellow soybeans, green soybeans, brown soybeans, black soybeans, and mixed soybeans.

(c) *Yellow soybeans.* Yellow soybeans shall be any soybeans with yellow or green seed coats, which in cross section are yellow or have a yellow tinge, and may include not more than 10.0 percent of soybeans of other classes.

(d) *Green soybeans.* Green soybeans shall be any soybeans with green seed coats which in cross section are green, and may include not more than 10.0 percent of soybeans of other classes.

(e) *Brown soybeans.* Brown soybeans shall be any soybeans with brown seed coats, and may include not more than 10.0 percent of soybeans of other classes.

(f) *Black soybeans.* Black soybeans shall be any soybeans with black seed coats, and may include not more than 10.0 percent of soybeans of other classes.

(g) *Mixed soybeans.* Mixed soybeans shall be any mixture of soybeans which does not meet the requirements for the classes yellow soybeans, green soybeans, brown soybeans, or black soybeans. Bicolored soybeans shall be classified as mixed soybeans.

(h) *Grades and grade designations.* Grades shall be the numerical grades, Sample grade, and special grades provided for in § 26.603.

(i) *Bicolored soybeans.* Bicolored soybeans shall be any soybeans with seed coats of two colors, one of which is black or brown.

(j) *Splits.* Splits shall be pieces of soybeans.

(k) *Damaged kernels.* Damaged kernels shall be soybeans, pieces of soybeans, and kernels and pieces of kernels of other grains which are heat-damaged, sprouted, frosted, badly ground-damaged, badly weather-damaged, moldy, diseased, or otherwise materially damaged.

(l) *Other grains.* Other grains shall be barley, corn, flaxseed, grain sorghums, oats, rye, wheat, buckwheat, einkorn, emmer, Polish wheat, popcorn, poulard wheat, rice, spelt, sweet corn, and wild oats.

(m) *Foreign material.* Foreign material shall be all matter, including soybeans and pieces of soybeans, which will pass readily through a sieve 0.032 inch thick with round perforations 0.125 (8/64) inch in diameter, and all matter other than soybeans remaining on such sieve after sieving.

(n) *Stones.* Stones shall be concreted earthy or mineral matter and other substances of similar hardness that do not disintegrate readily in water.

§ 26.602 *Principles governing application of standards.* The following

principles shall apply in the determination of the classes and grades of soybeans:

(a) *Basis of determinations.* Each determination of class, splits, and damaged kernels, shall be upon the basis of the grain when free from that part of foreign material which can be removed readily by the use of a sieve 0.032 inch thick with round perforations 0.125 (8/64) inch in diameter. All other determinations shall be upon the basis of the grain as a whole.

(b) *Percentages.* Percentages shall be upon the basis of weight.

(c) *Percentage of moisture.* Percentage of moisture shall be ascertained by the air oven and the method of use thereof described in Service and Regulatory Announcements No. 147 (revised August 1941), issued by the Agricultural Marketing Service (now Production and Marketing Administration) of the United States Department of Agriculture, or ascertained by any device and method which give equivalent results.

(d) *Percentage of splits.* The percentage of splits shall be expressed in whole percent and any fraction of a percent shall be disregarded.

(e) *Test weight per bushel.* Test weight per bushel shall be the weight per Winchester bushel, as determined by the testing apparatus and the method of use thereof described in Bulletin No. 1065, dated May 18, 1922, issued by the United States Department of Agriculture, or as determined by any device and method which give equivalent results.

§ 26.603 *Grade requirements.* The following grade requirements are applicable under these standards:

(a) *Numerical grades, sample grade, and grade requirements for all classes of soybeans.*

Grade	Minimum test weight per bushel	Maximum limits of—			
		Moisture	Splits	Damaged kernels (soybeans and other grains)	Foreign material
	Pounds	*Percent*	*Percent*	*Percent*	*Percent*
No. 1 [1]	56	13.0	10	2.0	2.0
No. 2 [1]	54	14.0	20	3.0	3.0
No. 3 [1]	52	16.0	30	5.0	4.0
No. 4 [2]	49	18.0	40	8.0	6.0

Sample grade: Sample grade shall be soybeans which do not meet the requirements for any of the grades from No. 1 to No. 4, inclusive; or which are musty, or sour, or heating; or which have any commercially objectionable foreign odor; or which contain stones; or which are otherwise of distinctly low quality.

[1] The soybeans in grade No. 1 of the class Yellow Soybeans may contain not more than 1.0 percent, in grade No. 2 not more than 2.0 percent, and in grade No. 3 not more than 5.0 percent of Green, Black, Brown, or bicolored soybeans, either singly or in any combination.

[2] Soybeans which are materially weathered shall not be graded higher than No. 4.

(b) *Special grades, special grade requirements, and special grade designations for all classes of soybeans*—(1) *Garlicky soybeans*—(i) *Requirements.* Garlicky soybeans shall be soybeans which contain 5 or more garlic bulblets in 1,000 grams of soybeans.

(ii) *Grade designation.* Garlicky soybeans shall be graded and designated according to the grade requirements of the standards applicable to such soybeans if they were not garlicky, and there shall be added to and made a part of the grade designation the word "Garlicky."

(2) *Weevily soybeans*—(i) *Requirements.* Weevily soybeans shall be soybeans which are infested with live weevils or other live insects injurious to stored grain.

(ii) *Grade designation.* Weevily soybeans shall be graded and designated according to the grade requirements of the standards applicable to such soybeans if they were not weevily, and there shall be added to and made a part of the grade designation the word "Weevily."

The foregoing standards shall become effective September 1, 1949, and on that date shall supersede the standards for soybeans theretofore fixed and promulgated (7 CFR, Cum. Supp., 26.601 et seq.).

Done at Washington, D. C., this 19th day of April 1949. Witness my hand and the seal of the United States Department of Agriculture.

[SEAL] CHARLES F. BRANNAN,
Secretary of Agriculture.

[F. R. Doc. 49-3163; Filed, Apr. 22, 1949; 8:57 a. m.]

Chapter IX—Production and Marketing Administration (Marketing Agreements and Orders), Department of Agriculture

[Grapefruit Reg. 111]

PART 933—ORANGES, GRAPEFRUIT, AND TANGERINES GROWN IN FLORIDA

LIMITATION OF SHIPMENTS

§ 933.435 *Grapefruit Regulation 111*—(a) *Findings.* (1) Pursuant to the marketing agreement, as amended, and Order No. 33, as amended (7 CFR and Supps. Part 933), regulating the handling of oranges, grapefruit, and tangerines grown in the State of Florida, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended, and upon the basis of the recommendations of the committees established under the aforesaid amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of shipments of grapefruit, as hereinafter provided, will tend to effectuate the declared policy of the act.

(2) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule making procedure, and postpone the effective date of this section until 30 days after publication thereof in the FEDERAL REGISTER (60 Stat. 237; 5 U. S. C. 1001 et seq.) because the time intervening between the date when information upon which this section is based became available and the time when this section must become effective in order to effectuate the declared policy of the Agricultural Marketing Agreement Act of 1937, as amended, is insufficient, and a reasonable time is permitted, under the circumstances, for preparation for such effective date.

(b) *Order.* (1) Grapefruit Regulation 110 (14 F. R. 881) is hereby terminated as of the effective time of this section.

(2) During the period beginning at 12:01 a. m., e. s. t., April 25, 1949, and ending at 12:01 a. m., e. s. t., May 9, 1949, no handler shall ship:

(i) Any grapefruit of any variety, grown in the State of Florida, which grade U. S. No. 3, or lower than U. S. No. 3 grade;

(ii) Any seeded grapefruit, other than pink grapefruit, grown in the State of Florida which are of a size that will pack 96 grapefruit, packed in accordance with the requirements of a standard pack, in a standard nailed box unless such grapefruit grade U. S. Fancy, U. S. No. 1 Bright, U. S. No. 1, U. S. No. 1 Golden, U. S. No. 1 Bronze, or U. S. No. 1 Russet;

(iii) Except as provided in subdivision (ii) of this paragraph, any seeded grapefruit, other than pink grapefruit, grown in the State of Florida which are of a size smaller than a size that will pack 80 grapefruit, packed in accordance with the requirements of a standard pack, in a standard nailed box;

(iv) Any pink seeded grapefruit, grown in the State of Florida, which are of a size smaller than a size that will pack 96 grapefruit, packed in accordance with the requirements of a standard pack, in a standard nailed box;

(v) Any seedless grapefruit, grown in the State of Florida, which are of a size smaller than a size that will pack 126 grapefruit unless such grapefruit grade U. S. Fancy, U. S. No. 1 Bright, U. S. No. 1, U. S. No. 1 Golden, U. S. No. 1 Bronze, or U. S. No. 1 Russet.

(3) As used in this section, "handler" and "ship" shall have the same meaning as is given to each such term in said amended marketing agreement and order; and the terms "U. S. Fancy," "U. S. No. 1 Bright," "U. S. No. 1," "U. S. No. 1 Golden," "U. S. No. 1 Bronze," "U. S. No. 1 Russet," "U. S. No. 3," "standard pack," and "standard nailed box" shall each have the same meaning as when used in the United States Standards for Grapefruit (13 F. R. 4787). (48 Stat. 31, as amended; 7 U. S. C. 601 et seq.)

Done at Washington, D. C., this 20th day of April 1949.

[SEAL] S. R. SMITH,
Director, Fruit and Vegetable Branch, Production and Marketing Administration.

[F. R. Doc. 49-3204; Filed, Apr. 22, 1949; 9:07 a. m.]

[Orange Reg. 164]

PART 933—ORANGES, GRAPEFRUIT, AND TANGERINES GROWN IN FLORIDA

LIMITATION OF SHIPMENTS

§ 933.434 *Orange Regulation 164*—(a) *Findings.* (1) Pursuant to the marketing agreement, as amended, and Order No. 33, as amended (7 CFR and Supps. Part 933), regulating the handling of oranges, grapefruit, and tangerines grown in the State of Florida, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended, and upon the basis of the recommendations of the committees established under the aforesaid amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of shipments of oranges, as hereinafter provided, will tend to effectuate the declared policy of the act.

(2) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule making procedure, and postpone the effective date of this section until 30 days after publication thereof in the FEDERAL REGISTER (60 Stat. 237; 5 U. S. C. 1001 et seq.) because the time intervening between the date when information upon which this section is based became available and the time when this section must become effective in order to effectuate the declared policy of the Agricultural Marketing Agreement Act of 1937, as amended, is insufficient and a reasonable time is permitted, under the circumstances, for such effective date.

(b) *Order.* (1) During the period beginning at 12:01 a. m., e. s. t., April 25, 1949, and ending at 12:01 a. m., e. s. t., May 9, 1949, no handler shall ship:

(i) Any oranges, except Temple oranges, grown in Regulation Area I which grade U. S. No. 2 Bright, U. S. No. 2 Russet, U. S. No. 3, or lower than U. S. No. 3 grade;

(ii) Any oranges, except Temple oranges, grown in Regulation Area II which grade U. S. No. 2 Russet, U. S. No. 3, or lower than U. S. No. 3 grade;

(iii) Any oranges, except Temple oranges, grown in Regulation Area II which grade U. S. No. 2 or U. S. No. 2 Bright unless such oranges (*a*) are in the same container with oranges which grade at least U. S. No. 1 Russett and (*b*) are not in excess of 50 percent, by count, of the number of all oranges in such container; or

(iv) Any oranges, except Temple oranges, grown in Regulation Area I or Regulation Area II which are of a size larger than a size that will pack 126 oranges, packed in accordance with the requirements of a standard pack, in a standard nailed box.

(2) As used in this section, the terms "handler," "ship," "Regulation Area I," and "Regulation Area II" shall each have the same meaning as when used in said amended marketing agreement and order; and the terms "U. S. No. 1 Russet," "U. S. No. 2 Bright," "U. S. No. 2," "U. S. No. 2 Russet," "U. S. No. 3," "standard pack," "container," and "standard nailed box" shall each have the same meaning as when used in the United States Standards for Oranges (13 F. R. 5174, 5306). Shipments of Temple oranges grown in the State of Florida are subject to the provisions of Orange Regulation 159 (14 F. R. 501, 637). (48 Stat. 31, as amended; 7 U. S. C. 601 et seq.; 7 CFR and Supps. Part 933)

Done at Washington, D. C., this 20th day of April 1949.

[SEAL] S. R. SMITH,
Director, Fruit and Vegetable Branch, Production and Marketing Administration.

[F. R. Doc. 49-3205; Filed, Apr. 22, 1949; 9:07 a. m.]

[Lemon Reg. 316]

PART 953—LEMONS GROWN IN CALIFORNIA AND ARIZONA

LIMITATION OF SHIPMENTS

§ 953.423 *Lemon Regulation 316*—(a) *Findings.* (1) Pursuant to the marketing agreement, as amended, and Order No. 53, as amended (7 CFR, Cum. Supp., 953.1 et seq.; 13 F. R. 766), regulating the handling of lemons grown in the State of California or in the State of Arizona, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended, and upon the basis of the recommendation and information submitted by the Lemon Administrative Committee, established under the said amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of the quantity of such lemons which may be handled, as hereinafter provided, will tend to effectuate the declared policy of the act.

(2) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule making procedure, and postpone the effective date of this section until 30 days after publication thereof in the FEDERAL REGISTER (60 Stat. 237; 5 U. S. C. 1001 et seq.) because the time intervening between the date when information upon which this section is based became available and the time when this section must become effective in order to effectuate the declared policy of the Agricultural Marketing Agreement Act of 1937, as amended, is insufficient, and a reasonable time is permitted, under the circumstances, for preparation for such effective date.

(b) *Order.* (1) The quantity of lemons grown in the State of California or in the State of Arizona which may be handled during the period beginning at 12:01 a. m., P. s. t., April 24, 1949, and ending at 12:01 a. m., P. s. t., May 1, 1949, is hereby fixed as follows:

(i) District 1: 400 carloads.

(ii) District 2: Unlimited movement.

(2) The prorate base of each handler who has made application therefor, as provided in the said amended marketing agreement and order, is hereby fixed in accordance with the prorate base schedule which is attached hereto and made a part hereof by this reference.

(3) As used in this section, "handled," "handler," "carloads," "prorate base," "District 1," and "District 2" shall have the same meaning as is given to each such term in the said amended marketing agreement and order. (48 Stat. 31, as amended; 7 U. S. C. 601 et seq.)

Done at Washington, D. C. this 21st day of April 1949.

[SEAL] S. R. SMITH,
Director, Fruit and Vegetable Branch, Production and Marketing Administration.

PRORATE BASE SCHEDULE

DISTRICT NO. 1

Storage Date: April 17, 1949

[12:01 a. m. Apr. 24, 1949, to 12:01 a. m. May 8, 1949]

Handler	Prorate base (percent)
Total	100.000
American Fruit Growers, Inc., Corona	.556
American Fruit Growers, Inc., Fullerton	1.451
Hazeltine Packing Co	.850
Ventura Coastal Lemon Co	1.461
Ventura Pacific Co	2.097
Total A. F. G	6.415
Klink Citrus Association	.045
Lemon Cove Association	.062
Glendora Lemon Growers Association	1.092
La Verne Lemon Association	.559
La Habra, Citrus Association, The	1.597
Yorba Linda Citrus Association, The	1.386
Escondido Lemon Association	5.434
Alta Loma Heights Citrus Association	.385
Etiwanda Citrus Fruit Association	.401
Upland Lemon Growers Association	2.413
Central Lemon Association	1.945
Irvine Citrus Association, The	.964
Placentia Mutual Orange Association	1.185
Corona Citrus Association	.949
Corona Foothill Lemon Co	2.571
Jameson Co	.701
Arlington Heights Citrus Co	1.498
College Heights Orange & Lemon Association	1.312
Chula Vista Citrus Association, The	.962
El Cajon Valley Citrus Association	.156
Fallbrook Citrus Association	1.599
Lemon Grove Citrus Association	.375
San Dimas Lemon Association	1.840
Carpinteria Lemon Association	2.237
Carpinteria Mutual Citrus Association	2.674
Goleta Lemon Association	2.561
Johnston Fruit Co	4.565
North Whittier Heights Citrus Association	.714
San Fernando Heights Lemon Association	1.736
Sierra Madre-Lamanda Citrus Association	1.686
Tulare County Lemon & Grapefruit Association	.360
Briggs Lemon Association	1.731
Culbertson Lemon Association	1.172
Fillmore Lemon Association	1.781
Oxnard Citrus Association	8.063
Rancho Sespe	1.551
Santa Clara Lemon Association	3.060
Santa Paula Citrus Fruit Association	4.315
Saticoy Lemon Association	2.512
Seaboard Lemon Association	3.762
Somis Lemon Association	3.280
Ventura Citrus Association	.868
Limoneira Co	2.824
Teague-McKevett Association	1.216
East Whittier Citrus Association	1.043
Leffingwell Rancho Lemon Association	.775
Murphy Ranch Co	1.313
Whittier Citrus Association	.912

PRORATE BASE SCHEDULE—Continued

DISTRICT NO. 1—continued

Handler	Prorate base (percent)
Whittier Select Citrus Association	0.150
Total C. F. G. E.	86.292
Chula Vista Mutual Lemon Association	.594
Escondido Cooperative Citrus Association	.397
Index Mutual Association	.195
La Verne Cooperative Citrus Association	1.371
Orange Belt Fruit Distributors	1.250
Orange Cooperative Citrus Association	.100
Ventura County Orange & Lemon Association	2.565
Whittier Mutual Orange & Lemon Association	.358
Total M. O. D.	6.830
Banks, L. M.	.059
Evans Bros. Packing Co.	.013
Hill, Emma H.	.000
Johnson, Fred	.079
Lorbeer, Carroll W. C.	.007
MacDonald, Hugh J.	.000
Manos, Gus & William	.000
Paramount Citrus Association	.004
Robb, Homer F.	.016
Robinson, A. A.	.045
Sachs, Maurice A.	.000
San Antonio Orchard Co.	.060
Schaefer, Charles A.	.004
Table Praise Avocado Co., Inc.	.077
Tetley, F. A. Jr.	.079
Winkler, William	.020
Total independents	.463

[F. R. Doc. 49-3243; Filed Apr. 22, 1949; 12:09 p. m.]

TITLE 12—BANKS AND BANKING

Chapter II—Federal Reserve System

Subchapter A—Board of Governors of the Federal Reserve System

[Reg. W]

PART 222—CONSUMER INSTALMENT CREDIT

"LAY-AWAY" PLANS

§ 222.126 *"Lay-away" plans.* Section 222.6 (e) provides that in the case of a bona fide "lay-away" or other similar plan, the Registrant may treat the extension of credit in connection therewith as occurring at the date of the delivery. It will be seen that if the extension of credit had to be treated as occurring on the earlier date when the lay-away arrangement is initiated, there could be no effective lay-away, since it would be necessary to obtain the full down payment required by this part on such earlier date and to have the instalment payments on the remaining amount scheduled to begin shortly thereafter. There is, of course, no basis under this part for using the delivery date for some purposes and the earlier date for other purposes in connection with such a transaction. Accordingly, if the Registrant wishes to use a lay-away plan, the Board's view is that the down payment or maximum loan value must be calculated in accordance with the provisions of this part as of the date of delivery of the article. The Registrant may, of course, calculate the maximum maturity for the transaction as of the same date under § 222.6 (e), or, at his option, use a date not more than fifteen days subsequent to such date in acordance with § 222.6 (b).

(Sec. 111, 38 Stat. 262, sec. 5 (b), 40 Stat. 415, as amended; 12 U. S. C. 95a, 248 (i); E. O. 8843, Aug. 9, 1941, 6 F. R. 4035, 3 CFR, 1943 Cum. Supp. Interprets or applies Pub. Law 905, 80th Cong.)

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM,
[SEAL] S. R. CARPENTER,
Secretary.

[F. R. Doc. 49-3151; Filed, Apr. 22, 1949; 8:55 a. m.]

TITLE 49—TRANSPORTATION AND RAILROADS

Chapter I—Interstate Commerce Commission

[Docket No. 3666]

PARTS 71-77—TRANSPORTATION OF EXPLOSIVES

MISCELLANEOUS AMENDMENTS

In the matter of regulations for transportation of explosives and other dangerous articles.

At a session of the Interstate Commerce Commission, Division 3, held at its office in Washington, D. C., on the 14th day of April A. D. 1949.

It appearing, that pursuant to the Transportation of Explosives Act of March 4, 1921 (41 Stat. 1444), sections 831-835 of Title 18 of the United States Code approved June 25, 1948, and Part II of the Interstate Commerce Act, as amended, the Commission has heretofore formulated and published certain regulations for the transportation of explosives and other dangerous articles.

It further appearing, that in application received we are asked to amend the aforesaid regulations as set forth in provisions made a part thereof.

It is ordered, That the aforesaid regulations for the transportation of explosives and other dangerous articles be, and they are hereby, amended as follows:

PART 72—COMMODITY LIST OF EXPLOSIVES AND OTHER DANGEROUS ARTICLES CONTAINING THE SHIPPING NAME OR DESCRIPTION OF ALL ARTICLES SUBJECT TO PARTS 71-77

The following amendments are made to § 72.5 (formerly part of section 4, List of Explosives and Other Dangerous Articles, orders August 16, 1940, and February 3, 1948):

§ 72.5 *List of explosives and other dangerous articles.* * * *

Articles	Classed as—	Exemptions and packing (Section references are to Part 73 (formerly Part 3))	Label required if not exempt	Maximum quantity in one outside container by rail express
Change:				
Batteries electric storage, wet	Cor. L.	245 (o), 260	White	600 pounds.
Cordeau detonant fuse	Expl. C.	No exemption 68		300 pounds.

PART 73—REGULATIONS APPLYING TO SHIPPERS

SUBPART D—INFLAMMABLE (FLAMMABLE) SOLIDS AND OXIDIZING MATERIALS

1. In § 73.163 paragraph (c) notes 1 and 2 (formerly section 163 (c) notes 1 and 2, order March 7, 1949) note 1 is canceled, and note 2 is designated as note 1 to read as follows:

NOTE 1: Spec. 37E and 37F metal drums for export service, marked for an authorized gross weight of 160 pounds, must be at least 24 gage metal throughout.

SUBPART E—ACIDS AND OTHER CORROSIVE LIQUIDS

2. In § 73.260 paragraph (b) (3) (formerly section 260 (b) (3), order August 16, 1940) is amended to read as follows:

(3) (i) Single batteries not exceeding 75 pounds each may be shipped in 5-sided slip covers as prescribed herein, of solid or double-faced corrugated fiberboard complying with the following: (See § 73.260 (a) (2) for more than one battery in an outside container.)

(ii) Slip cover must fit snugly and provide inside top clearance of at least ½ inch above battery terminals and filler caps with reinforcement in place. Assembled for shipment, the bottom edges of the slip cover must not extend to the base of the battery but must not expose more than ½ inch thereof.

(iii) Top of slip cover must have interior reinforcement (insert or saddle) of fiberboard, wood, or other material of equal strength and rigidity so formed that any superimposed weight will bear only and directly downward on the top edges of the battery case or intercell connectors (straps). When top of slip cover consists of only one thickness of material, reinforcement must have a plane surface of same interior dimensions and thickness. Reinforcement must be of a height to provide minimum clearance required above and must be constructed to remain securely in place or be fastened to slip cover.

(iv) All fiberboard must be at least 200 pounds test (Mullen) and completed package (battery and slip cover) must be capable of withstanding top-to-bottom compression test of at least 500 pounds without damage to battery terminals or filler caps.

3. In § 73.261 paragraph (a) (3) (formerly section 261 (a) (3), order March 7, 1949) is amended to read as follows:

(3) *Spec. 21A.* Fiber drums with a single inside container consisting of a glass bottle not over 64 fluid ounces capacity filled with not over six pounds by weight of sulfuric acid (approximately

50 fluid ounces by volume). Bottle must be suspended in center of outside container by means of adequate supports and surrounded by bicarbonate of soda in sufficient quantity to fill drum and neutralize contents in the event of breakage.

4. In § 73.265 paragraph (a) (4) (formerly section 265 (a) (4), order August 16, 1940) is amended to read as follows:

(4) *Spec. 10A.* Wooden barrels or kegs lined with asphaltum or other material of equal efficiency resistant to hydrofluosilicic acid.

5. In § 73.276 paragraph (d) (formerly section 276 (d), order July 22, 1948) is amended to read as follows:

(d) *Spec. 5, 5A, 5C, 5G, or 17E.* Metal drums which shall be of type 304 or 347 stainless steel.

6. In § 73.277 paragraph (e) (formerly section 277 (e), order October 19, 1948) is amended to read as follows:

(e) Containers of 5 gallons capacity and over, of a type in service for transportation of this material prior to September 1, 1948, and of a design and venting arrangement approved by the Bureau of Explosives, may be continued in use until further order of the Commission.

7. Section 73.277 (formerly section 277, order October 19, 1948) is amended by adding paragraph (g) to read as follows:

(g) Shipments by tank motor vehicle are exempt from the regulations in this part.

SUBPART F—COMPRESSED GASES

8. In § 73.303 paragraph (i) (2) (formerly section 303 (i) (2), order March 7, 1949) is amended to read as follows:

(2) Cylinders with a water capacity of 200 pounds or more and for use with a liquefied petroleum gas with a specific gravity at 60° F. of 0.504 or greater may have their contents determined by using a fixed length dip tube gauging device. The length of the dip tube shall be such that when a liquefied petroleum gas with a specific volume of 0.03051 cu. ft/lb. at a temperature of 40° F. is charged into the cylinder it just reaches the bottom of the tube. The weight of this liquid shall not exceed 42 percent of the water capacity of the cylinder, which must be stamped thereon. The length of the dip tube, expressed in inches carried out to one decimal place and prefixed with the letters DT, shall be stamped on the cylinder and on the exterior of removable type dip tube; for the purpose of this requirement the marked length shall be expressed as the distance measured along the axis of a straight tube from the top of the boss through which the tube is inserted to the proper level of the liquid in the cylinder. The length of each dip tube shall be checked when installed by weighing each cylinder after filling except when installed in groups of substantially identical cylinders in which case one of each 25 cylinders shall be weighed. The quantity of liquefied gas in each container must be checked by means of the dip tube after disconnecting from the charging line. The outlet from the dip tube shall not be larger than a No. 54 drill size orifice. A container representative of each day's filling at each charging plant shall have its contents checked by weighing after disconnecting from the charging line.

9. In § 73.303 paragraph (j) (3) and note (formerly section 303 (j) (3) and note, orders August 16, 1940, and February 26, 1942) are amended to read as follows:

(3) The pressure in the cylinder at 70° F. must not exceed the service pressure for which the container is designed (see paragraph (p) (1), of this section except as provided in subparagraph (4) of this paragraph.

NOTE 5: Because of the present emergency and until June 1, 1950, or further order of the Commission, the requirements of subparagraph (4) of this paragraph are waived and ICC-3A and 3AA cylinders may be charged with compressed gases, other than liquefied or dissolved gases, to a pressure 10 percent in excess of their marked service pressures.

10. In § 73.303 paragraph (j) (4) (formerly section 303 (j) (4), order August 16, 1940) is amended to read as follows:

(4) Spec. 3A and 3AA cylinders may be charged with compressed gases, other than liquefied, dissolved, poisonous, or inflammable (flammable) gases, to a pressure 10 percent in excess of their marked service pressure: *Provided,*

(i) That such cylinders are equipped with frangible disc safety devices (without fusible metal backing) having a bursting pressure not exceeding the minimum prescribed test pressure.

(ii) That the elastic expansion shall have been determined at the time of the last test or retest by the water jacket method.

(iii) That either the average wall stress (see note 1) or the maximum wall stress (see note 2) shall not exceed the wall stress limitation shown in the following table:

Type of steel	Average wall stress limitation	Maximum wall stress limitation
Plain carbon steels over 0.35 carbon and medium manganese steels	53,000	58,000
Steels of analysis and heat-treatment specified in Spec. 3AA	67,000	73,000
Plain carbon steels less than 0.35 carbon made prior to 1920	45,000	48,000

NOTE 1: The average wall stress shall be computed from the elastic expansion data using the following formula:

$$S=\frac{1.7EE}{KV}-0.4P$$

where

S=wall stress, pounds per square inch
EE=elastic expansion (total less permanent) in cubic centimeters
K=factor$\times 10^{-7}$ experimentally determined for the particular type of cylinder being tested
V=internal volume in cubic centimeters (1 cubic inch=16.387 cubic centimeters)
P=test pressure, pounds per square inch

NOTE: Formula derived from formula of Note 2 and the following:

$$EE=PKV\times\frac{D^2}{D^2-d^2}$$

NOTE 2: The maximum wall stress shall be computed from the formula:

$$S=P\,\frac{(1.3D^2+0.4d^2)}{D^2-d^2}$$

where

S=wall stress, pounds per square inch
P=test pressure, pounds per square inch
D=outside diameter, inches
d=D$-2t$, where t=minimum wall thickness determined by a suitable method

(iv) That an external and internal visual examination made at the time of test or retest shows the cylinder to be free from excessive corrosion, pitting, or dangerous defects.

(v) That a plus sign (+) be added following the test date marking on the cylinder.

11. In § 73.303 (formerly section 303, order August 16, 1940) is amended by adding paragraph (j) (5), and note to read as follows:

(5) The pressure in the cylinder at 130° F. must not exceed one and one-fourth times the service pressure for which the container is designed, except in the case of acetylene, nitrous oxide, and liquefied carbon dioxide (see paragraph (p) (1) of this section).

NOTE: When a cylinder is charged in accordance with note to subparagraphs (3) or (4) of this paragraph, the pressure in the cylinder at 130° F. must not exceed one and one-fourth times the filling pressure authorized therein.

12. In § 73.303 paragraph (p) (2) (vii) (formerly section 303 (p) (b) (7), order February 13, 1946) is amended to read as follows:

(vii) Cylinders, other than those made under Spec. ICC-9 or ICC-40, not over 12 inches long, exclusive of neck, nor over 4½ inches outside diameter, unless containing a liquefied gas for which the regulations in this part prescribe a service pressure of 1800 pounds per square inch or higher or containing a nonliquefied gas having a pressure in the cylinder of 1800 pounds per square inch or higher at 70° F.

NOTE: Cylinders manufactured prior to July 1, 1949 and not originally equipped with a safety device may be continued in service without device until July 1, 1951.

SUBPART G—POISONOUS ARTICLES

13. In § 73.332 paragraph (a) (5) (formerly section 332 (a) (5), order July 28, 1948) is amended to read as follows:

(5) Metal drums of not over 20 gallons capacity constructed of not less than 20 gauge bodies with welded side seams and not less than 18 gauge heads double seamed or welded to bodies. Sheets for bodies and heads shall be low carbon open hearth or electric steel, or monel. Openings over 2.3 inches diameter not permitted. Flanges shall be welded, or riveted and soldered, or pressed in and soldered, to drums. Closures to be of the threaded plug or cap type and to be gas tight but may be equipped with suitable venting device. Shipments are authorized for intrastate transportation by private and qualified contract carriers by motor vehicle only.

14. In § 73.357 paragraph (b) (2) (formerly section 357 (b) (2), order August 16, 1940) is amended to read as follows:

(2) Cyanides, or cyanide mixtures, in tightly closed glass, earthenware, or

metal inside containers, not over one pound each, securely cushioned when necessary to prevent breakage, and packed in outside wooden or fiberboard boxes, or in wooden barrels. Net weight of cyanides or cyanide mixtures in any outside container, not over 25 pounds.

PART 73a—SHIPPING CONTAINER SPECIFICATIONS [1]

1. Section 73a.3A–13 (b) (formerly paragraph 13 (b) of Spec. 3A, order August 16, 1940) is amended to read as follows:

(b) Pressure must be maintained for 30 seconds and sufficiently longer to insure complete expansion. Any internal pressure applied after heat-treatment and previous to the official test must not exceed 90 percent of the test pressure. If, due to failure of the test apparatus, the test pressure cannot be maintained, the test may be repeated at a pressure increased by 10 percent or 100 pounds per square inch, whichever is the lower.

2. Section 73a.3AA–5 note 1 (formerly paragraph 5 note 1 of Spec. 3AA, order March 7, 1949) is amended to read as follows:

NOTE 1: A heat of steel made under any of the above specifications, chemical analysis of which is slightly out of the specified range, is acceptable, if satisfactory in all other respects, provided the standard permissible variations from specified chemical ranges and limits published in the American Iron and Steel Institute Products Manual, Section 10, dated June 1945, are not exceeded or are approved by the Bureau of Explosives.

3. Section 73a.4BA–19 note 1 (formerly paragraph 19 note 1 of Spec. 4BA, order March 7, 1949) is amended to read as follows:

NOTE 1: A heat of steel made under any of the above specifications, chemical analysis of which is slightly out of the specified range, is acceptable, if satisfactory in all other respects, provided the standard permissible variations from specified chemical ranges and limits published in the American Iron and Steel Institute Products Manual, Section 10, dated June 1945, are not exceeded or are approved by the Bureau of Explosives.

4. Section 73a.8–22 (a) note 1 (formerly paragraph 22 (a) note 1 of Spec. 8, order March 7, 1949) is amended to read as follows:

NOTE: A heat of steel made under any of the above specifications, chemical analysis of which is slightly out of the specified range, is acceptable, if satisfactory in all other respects, provided the standard permissible variations from specified chemical ranges and limits published in the American Iron and Steel Institute Products Manual, Section 10, dated June 1945, are not exceeded or are approved by the Bureau of Explosives.

5. Section 73a.12B–11 and note (formerly paragraph 11 of Spec. 12B, order August 16, 1940 and note order July 14, 1942) is amended to read as follows:

§ 73a.12B–11 *Tape.* Except as authorized in § 73a.12B–16 (c)) coated with animal glue at least equal to No. 1¾ Peter Cooper standard. Cloth tape of strength, across the woof, at least 70 units, Elmendorf test. Sisal tape of 2 sheets of No. 1 Kraft paper, total weight 80 pounds per ream (480 sheets, 24" x 36"); sheets to be combined with asphalt and reinforced by unspun sisal fibers completely embedded in the asphalt and extending across the tape.

NOTE: Because of the present emergency and until further order of the Commission, a ream may consist of 500 sheets.

6. Section 73a.12B–16 (formerly paragraph 16 of Spec. 12B, order August 16, 1940) is amended by adding paragraph (c) to read as follows:

(c) *For corrugated fiberboard only.* One butt joint taped inside and outside with strips of one thickness of sulphate paper not less than 2 inches wide extending entire length of joint and firmly glued to box. For boxes not exceeding 65 pounds gross weight, outside strip of sulphate paper to be of basis weight not less than 40 pounds testtesting not less than 60 pounds and inside strip of sulphate paper to be of basis weight not less than 40 pounds testing not less than 40 pounds. For boxes exceeding 65 pounds gross weight, outside and inside with strips of sulphate paper which must each be of basis weight not less than 90 pounds testing not less than 90 pounds. Basis weight of paper shown is for 500 sheets, 24 x 36 inches.

7. Section 73a.15D–20 (formerly paragraph 20 of Spec. 15D, order April 19, 1946) is amended to read as follows:

§ 73a.15D–20 Boxes over 500 pounds gross weight are authorized for shipments of wet electric storage batteries when the batteries are contained in a rigid cradle or box, or are securely fastened together so as to form a single unit, and not more than one such cradle, box, or unit is packed in the outside container. Skids required: runners to be at least 2 inches by 4 inches commercial thickness, minimum of three, except that two runners are authorized when width of case does not exceed 24 inches; or two runners may be used, minimum of 4 inches by 4 inches commercial thickness, when case does not exceed 36 inches in width. Runners to be beveled at ends to facilitate use of rollers. Bottom boards, minimum of 1 inch commercial thickness, to be nailed across runners; bracing of parts and thickness of lumber to be sufficient to protect contents in transit.

8. Section 73a.16B–21 is added to read as follows:

§ 73a.16B–21 *Special box.* Gross weight not over 500 pounds. Must comply with this specification except as follows: Sides, top, bottom, and ends, to be of group 2 or 3 wood having minimum thickness of ¼" for boxes not over 315 pounds gross weight, 5/16" for boxes not over 400 pounds gross weight, and ⅜" for boxes not over 500 pounds gross weight. Size of end cleats must be at least 1 13/16" x ⅞" and ends must have horizontal supporting battens at least 1⅜" x 1 3/16". One batten is required for boxes not over 200 pounds gross weight and three battens for others. Ends must be held in place by one metal strap at least ⅝" x 0.020" completely around the box stapled to the middle end battens. When size of box will not permit the application of all prescribed binding wires during manufacture, the additional binding wires of prescribed number and size, or metal straps of equal number and strength, must be applied after closing. At least three binding wires must be applied to boxes not over 200 pounds gross weight and at least four to boxes over 200 pounds gross weight by the box manufacturer. Binding wires for boxes over 400 pounds gross weight must be of size and number prescribed for boxes not over 400 pounds gross weight.

9. Section 73a.17E–9 (formerly paragraph 9 of Spec. 17E, order August 16, 1940) is amended by adding paragraph (b) to read as follows:

(b) Closing part (plug, cap, plate, etc.)[2] must be of metal as thick as prescribed for head of container: *Provided,* That thinner metal closures or closures of other material are authorized for containers of 12 gallons capacity or less when opening to be closed is not over 2.3" diameter and closures, except threaded metal closures, are fitted with outside sealing devices which cannot be removed without destroying the closure or sealing device. Closures of a material other than metal must be of a type approved by the Bureau of Explosives for use, after satisfactory proof of efficiency.

10. Section 73a.17X–2 (formerly paragraph 2 of Spec. 17X, order March 31, 1941) is amended to read as folows:

§ 73a.17X–2 *Rated capacity.* As marked, see § 73a.17X–10 (c). Actual capacity of containers shall not be less than rated (marked) capacity plus 2 percent, nor greater than rated capacity plus 2 percent, plus 1 quart, except that for containers over 30 gallons marked capacity actual capacity shall be not less than rated capacity plus 2 percent, nor greater than rated capacity plus 2 percent plus 1 gallon.

11. Section 73a.23F–13 (formerly paragraph 13 of Spec. 23F, order August 16, 1940) is amended to read as follows:

§ 73a.23F–13 *Type of box authorized.* Of solid fiberboard; 1-piece, or 3-piece without recessed heads, fitted with lining tubes. Boxes having handholes are authorized when approved by the Bureau of Explosives.

12. Section 73a.23G–5 (formerly paragraph 5 of Spec. 23G, order January 23, 1946) is amended to read as follows:

§ 73a.23G–5 *Tape.* Coated with animal glue at least equal to No. 1¾ Peter Cooper standard or other adhesive equivalent in tensile properties and resistance to deterioration. Cloth tape of strength, across the woof, at least 70 units, Elmendorf test. Sisal tape of 2 sheets of No. 1 Kraft paper, total weight 80 pounds per ream (480 sheets, 24" x 36"); sheets to be combined with asphalt and reinforced by unspun sisal fibers completely embedded in the asphalt and extending across the tape.

[1] Formerly part of part 3.

[2] This does not apply to cap seal over a closure which complies with all requirements.

13. Section 73a.23G–13(d) (formerly paragraph 13 (d) of Spec. 23G, order January 23, 1946) is amended to read as follows:

(d) Three loaded samples to be tested. Each must withstand, without rupture, four 4-foot drops diagonally on the end more likely to cause rupture on impact.

14. Section 73a.23G–13 (e) (formerly paragraph 13 (e) of Spec. 23G, order January 23, 1946) is amended to read as follows:

(e) Three loaded samples to be tested. Each must be dropped once, flat on its side, across another similar package lying flat upon the ground with its longitudinal axis at right angles to container dropped. Drops must be made from a height four feet above the topmost point of the container on the ground.

PART 74—REGULATIONS APPLYING PARTICULARLY TO CARRIERS BY RAIL FREIGHT [1]

SUBPART D—UNLOADING FROM CARS

Section 74.560 paragraph (a) (formerly section 560 (a), order August 16, 1940) is amended to read as follows:

(a) Tank cars containing inflammable (flammable) liquids having a flash point of 80° F. or below, except liquid road asphalt or tar, must not be delivered, unless originally consigned or subsequently reconsigned to parties having private-siding (see note 1) or railroad-siding facilities equipped for piping the liquid from tank cars to permanent storage tanks of sufficient capacity to receive contents of car.

PART 77—REGULATIONS APPLYING TO SHIPMENTS OF COMMON, CONTRACT, OR PRIVATE CARRIERS BY PUBLIC HIGHWAY [2]

Section 77.824 paragraph (f) (3) (formerly section 824 (f) (3), order November 8, 1941) is amended to read as follows:

(3) *Storage batteries.* In addition to the requirements set forth in § 77.824 (f) (2), all storage batteries containing any electrolyte shall be so loaded, if loaded with other lading, that all such batteries will be protected against other lading falling onto or against them; and adequate means shall be provided in all cases for the protection and insulation of battery terminals against short circuits.

It is further ordered, That the foregoing amendments to the aforesaid regulations shall have full force and effect on July 14th, 1949, and that such regulations as herein amended shall thereafter be observed until further order of the Commission.

It is further ordered, That compliance with the aforesaid regulations as herein amended is hereby authorized on and after the date of service of this order.

And it is further ordered, That copies of this order be served upon all parties of record herein, and that notice shall be given to the general public by depositing a copy in the office of the Secretary of the Commission at Washington, D. C., and by filing it with the Director, Division of Federal Register.

(49 Stat. 546, as amended, secs. 831–835, Pub. Law 772, 80th Cong., 62 Stat. 738; 49 U. S. C. 304)

By the Commission, Division 3.

[SEAL] W. P. BARTEL, *Secretary.*

[F. R. Doc. 49–3159; Filed, Apr. 22, 1949; 8:56 a. m.]

[1] Formerly Part 4.
[2] Formerly Part 7.

TITLE 39—POSTAL SERVICE

Chapter I—Post Office Department

PART 35—PROVISIONS APPLICABLE TO THE SEVERAL CLASSES OF MAIL MATTER

MATTER LIABLE TO DAMAGE MAILS OR INJURE PERSON; PREPARATION AND PACKING WHERE ADMISSIBLE; PLANT QUARANTINE

In Part 35 (13 F. R. 8906) make the following changes:

1. Add a new section to read § 35.16a *Radioactive material* between §§ 35.16 and 35.17 in the list of sections.

2. Add a new section § 35.16a *Radioactive material* in text between §§ 35.16 and 35.17 (13 F. R. 8915) to read as follows:

§ 35.16a *Radioactive material*—(a) *When mailable.* Radioactive materials (liquid, solid or gaseous; manufactured articles such as instrument or clock dials of which radioactive materials are a component part; luminous compounds; ores and residues) which fulfill all the following conditions shall be accepted for mailing provided they are properly packed in a strong tight outside container and marked "Radioactive Material—Gamma Radiation at Surface of Parcel Less than 10 Milliroentgens for 24 hours—No Significant Alpha, Beta or Neutron Radiation."

(b) *Leakage.* The package must be such that there can be no leakage of radioactive material under conditions normally incident to transportation in the mails in sacks.

(c) *Maximum contents.* The package must contain not more than 0.1 millicuries of radium, or polonium, or that amount of strontium 89, strontium 90, or barium 140 which disintegrates at a rate of more than 5 million atoms per second; or that amount of any other radioactive substance which disintegrates at a rate of more than 50 million atoms per second.

(d) *Amount of radiations at surface.* The package must be such that no significant alpha, beta or neutron radiation is emitted from the exterior of the package and the gamma radiation at any surface of the package must be less than 10 milliroentgens for 24 hours.

(e) *Specifications of container.* The design and preparation of the package of radioactive material must be such that there will be no significant radioactive surface contamination of any part of the container. Liquids must be packed in tight glass, earthenware or other suitable inside containers surrounded by an absorbent material sufficient to absorb the entire liquid contents and of such nature that its efficiency will not be impaired by chemical reaction with the contents.

NOTE: The amounts of radioactive materials shown are based on exemptions to I. C. C. Regulation 367, while packaging requirements are based on I. C. C. Regulation 368.

(R. S. 161, 396, sec. 24, 20 Stat, 361, sec. 2, 33 Stat. 440, sec. 13, 39 Stat. 162, sec. 5, 41 Stat. 583, secs. 304, 309, 42 Stat. 24, 25, sec. 206, 43 Stat. 1067, sec. 6, 45 Stat. 941, 46 Stat. 526, 62 Stat. 781; 5 U. S. C. 22, 369, 18 U. S. C. 1716, 39 U. S. C. 250, 273, 291, 291a, 295)

[SEAL] J. M. DONALDSON, *Postmaster General.*

[F. R. Doc. 49–3154; Filed, Apr. 22, 1949; 8:55 a. m.]

PART 41—THE PRIVACY AND SAFEGUARDING OF THE MAILS

CORRECTION OF MAILING LISTS

In § 41.8 *Correction of mailing lists* (13 F. R. 8929) amend the first sentence in paragraph (d) *Allowable corrections,* to read as follows:

(d) *Allowable corrections.* Corrections shall consist of crossing off the names of persons to whom mail cannot be delivered or forwarded, the correction of incorrect street names, the correction of incorrect local street, rural, or post-office box numbers; insertion of delivery zone numbers where applicable; the correction of initials where apparently there has been a bona fide intention to unite a name known to the owner of the list, and the indication of the head of the family, if known, when two or more names are shown for the same address.

(R. S. 161, 396, secs. 304, 309, 42 Stat. 24, 25; 5 U. S. C. 22, 369)

[SEAL] J. M. DONALDSON, *Postmaster General.*

[F. R. Doc. 49–3153; Filed, Apr. 22, 1949; 8:55 a. m.]

PART 63—INDEMNITY FOR LOSSES

Section 63.6 *When no indemnity will be paid* (13 F. R. 8977), is amended by adding a new paragraph (k), to read as follows:

(k) For the loss or injury to any matter mailed in the execution of any fraudulent scheme or enterprise. The finding of the Postmaster General under § 36.9, that the scheme or enterprise is carried on by means of false or fraudulent representations shall relieve the Post Office Department of liability for indemnity as to matter mailed after notice of the institution of proceedings pursuant to § 36.9 has been given to the person conducting the scheme or enterprise. As to matter mailed before such notice, the findings of the Postmaster General will be regarded as evidence that the scheme or enterprise is fraudulent.

(R. S. 161, 396, 3926, as amended, sec. 1, 29 Stat. 559, sec. 8, 37 Stat. 558, as amended, secs. 304, 309, 42 Stat. 24, 25,

sec. 3, 45 Stat. 469, as amended; 5 U. S. C. 22, 369, 39 U. S. C. 244, 381, 381a)

[SEAL] J. M. DONALDSON,
Postmaster General.

[F. R. Doc. 49-3156; Filed, Apr. 22, 1949; 8:56 a. m.]

PART 120—OCEAN MAIL SERVICE

NONCONTRACT SERVICE

In § 120.7 *Compensation for transportation of foreign mails* (13 F. R. 9068) amend paragraph (3) by adding the following subparagraph (d):

(d) *Free transportation of foreign mails.* As an exception to paragraphs (b) and (c) of this section and in accordance with the free transit provisions of the Convention of the Postal Union of the Americas and Spain, no compensation will be paid by the United States Post Office Department for the transportation of letters and prints mails originating in the United States and/or countries signatory to the Convention of the Postal Union of the Americas and Spain when dispatched on vessels of the registry or flag of a signatory country, other than the United States or Canada, as their conveyance by such vessels is an obligation of the country in which the vessel is registered.

(1) The following listed countries are signatory to the Convention of the Postal Union of the Americas and Spain:

Argentina.	Guatemala.
Bolivia.	Haiti.
Brazil.	Honduras (Republic).
Canada.	Mexico.
Colombia.	Nicaragua.
Costa Rica.	Panama.
Cuba.	Paraguay.
Chile.	Peru.
Dominican Republic.	Spain.
Ecuador.	United States.
El Salvador.	Uruguay.

(R. S. 4007, 4009, as amended, 44 Stat. 900, as amended; 39 U. S. C. 652, 654)

[SEAL] J. M. DONALDSON,
Postmaster General.

[F. R. Doc. 49-3157; Filed, Apr. 22, 1949; 8:56 a. m.]

PART 127—INTERNATIONAL POSTAL SERVICES POSTAGE RATES, SERVICE AVAILABLE, AND INSTRUCTIONS FOR MAILING

PORTUGUESE TIMOR

In § 127.335 *Portuguese Timor* (13 F. R. 9209) amend the table of rates contained in subparagraph (1) of paragraph (b) *Parcel post.* (Portuguese Timor.), to read as follows:

(b) *Parcel Post.* (Portuguese Timor.)

(1) *Table of rates.* (i) Surface parcels.

[Rates include transit charges]

Pounds:	Rate	Pounds:	Rate
1	$0.43	12	$2.45
2	.57	13	2.59
3	.78	14	2.73
4	.92	15	2.87
5	1.06	16	3.01
6	1.20	17	3.15
7	1.34	18	3.29
8	1.56	19	3.43
9	1.70	20	3.57
10	1.84	21	3.71
11	1.98	22	3.85

Weight limit: 22 pounds.
Customs declarations: 2 Form 2966.
Dispatch note: 1 Form 2972.
Parcel-post sticker: 1 Form 2922.
Sealing: Compulsory.
Group shipments: Limited to 3 parcels (see § 127.76).
Registration: No.
Insurance: No.
C.o.d.: No.
Consular invoice: Yes. (See Observations, subparagraph 4 of this paragraph.)

(R. S. 161, 396, 398, secs. 304, 309, 42 Stat. 24, 25, 48 Stat. 943; 5 U. S. C. 22, 369, 372)

[SEAL] J. M. DONALDSON,
Postmaster General.

[F. R. Doc. 49-3158; Filed, Apr. 22, 1949; 8:56 a. m.]

PROPOSED RULE MAKING

DEPARTMENT OF AGRICULTURE

Production and Marketing Administration

[7 CFR, Parts 725, 726]

BURLEY AND FLUE-CURED TOBACCO AND FIRE-CURED AND DARK AIR-CURED TOBACCO

NOTICE OF FORMULATION OF REGULATIONS RELATING TO MARKETING OF TOBACCO, COLLECTION OF MARKETING PENALTIES, AND RECORDS AND REPORTS 1949–50 MARKETING YEAR

Pursuant to the authority contained in the applicable provisions of the Agricultural Adjustment Act of 1938, as amended (7 U. S. C. 1301, 1311–1314, 1372–1375), the Secretary of Agriculture is preparing to formulate marketing quota regulations governing the issuance of marketing cards, the identification of tobacco, the collection and refund of penalties, and the records and reports incident thereto on the marketing of Burley, flue-cured, fire-cured, and dark air-cured tobacco for the 1949–50 marketing year.

Consideration is being given to a change in the provisions of the 1949–50 regulations from those of the 1948–49 regulations which would require company tobacco buyers or other tobacco buying interests, including purchasers of scrap tobacco, to file reports on Tobacco 25, Dealer's Record, of any purchases of tobacco other than purchases at public auction through a warehouse in the regular course of business.

Prior to the final adoption and issuance of such regulations, consideration will be given to any data, views, and recommendations pertaining thereto which are submitted in writing to the Director, Tobacco Branch, Production and Marketing Administration, United States Department of Agriculture, Washington 25, D. C. All submissions must be postmarked not later than May 7, 1949.

Issued at Washington, D. C., this 20th day of April 1949.

[SEAL] RALPH S. TRIGG,
Administrator.

[F. R. Doc. 49-3191; Filed, Apr. 22, 1949; 9:03 a. m.]

[7 CFR, Ch. IX]

HANDLING OF MILK IN LIMA, OHIO, MARKETING AREA

NOTICE OF RECOMMENDED DECISION AND OPPORTUNITY TO FILE WRITTEN EXCEPTIONS THERETO WITH RESPECT TO PROPOSED MARKETING AGREEMENT AND ORDER.

Pursuant to the rules of practice and procedure, as amended, governing proceedings to formulate marketing agreements and orders (7 CFR. Supps., 900.1 et seq.), notice is hereby given of the filing with the Hearing Clerk of this recommended decision of the Assistant Administrator, Production and Marketing Administration, United States Department of Agriculture, with respect to a proposed marketing agreement and order regulating the handling of milk in the Lima, Ohio, marketing area, to be made effective pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U. S. C. 601 et seq.).

Interested parties may file exceptions to this recommended decision with the Hearing Clerk, Room 1844, South Building, United States Department of Agriculture, Washington 25, D. C., not later than the close of business on the 20th day after the publication of this recommended decision in the FEDERAL REGISTER.

Preliminary statement. A public hearing, on the record of which the proposed marketing agreement and the proposed order were formulated was called by the Production and Marketing Administration, United States Department of Agriculture, following receipt of a petition filed by the Northwestern Cooperative Sales Association, Inc., and was held at Lima, Ohio, from November 15 to 19, 1948, inclusive, pursuant to notice duly published in the FEDERAL REGISTER (13 F. R. 6020, Doc. No. AO-197.) The period from November 19, 1948, to February 15, 1949, was reserved to interested parties for the filing of briefs on the record.

The major issues developed at the hearing were concerned with the following matters:

1. Whether milk produced for the Lima fluid market is in the current of interstate commerce or directly burdens, obstructs or affects interstate commerce in milk or its products;

2. Whether marketing conditions justify the issuance of a milk marketing agreement or order;

3. The proper size of the marketing area;

4. What milk should be covered for pricing purposes;

5. The classification of milk;

6. The level of class prices to be paid and the methods for determining such prices;

7. The type of pool to be used in distributing returns to producers; and

8. Administrative provisions.

Findings and conclusions. The following findings and conclusions on the material issues decided herein are hereby made upon the basis of the record of the hearing:

(1) Milk to be regulated under the proposed marketing agreement and order is in the current of interstate commerce, or directly burdens, obstructs, or affects interstate commerce in milk or its products. The fluid milk supply for the city of Lima is produced in a production area extending approximately 40 miles in each direction from the city. This area is principally an agricultural district in which milk production is a major enterprise. The farms of producers supplying milk to the Lima market for consumption as fluid milk are interespersed among those of other dairymen delivering milk to manufacturing plants. Located within or near this production area and drawing a large proportion of their supplies from the area, are 14 dairy manufacturing plants. All of these plants manufacture dairy products that are shipped interstate. Of the 14 plants three make regular shipments of sweet cream and occasional shipments of milk in fluid form to other states. Five of these 14 plants receive milk from producers whose farms are located in Indiana. Four of such five plants are located in Ohio and the other in Indiana. Milk products manufactured by the 14 plants and moved to other states include evaporated and condensed milk (bulk and in hermetically sealed cans), nonfat dry milk solids, dried whole milk, cheese, butter, ice cream, milk sugar, and baby food. All of these manufacturing plants compete actively with Lima fluid milk distributors in the purchase of milk from dairy farmers.

The evidence showed frequent shifting of producers between manufacturing plants and Lima fluid milk plants, and among the manufacturing plants themselves. The addition of producers by Lima distributors often results from a shift of dairy farmers from manufacturing plants. There was evidence to the effect that a portion of the milk purchased from dairy farmers by Lima distributors during the season of normally high production is in excess of the market's needs for fluid sales. The past experience of the market indicates that there will be a seasonal excess of Grade A milk in the months of flush production when the supply of Grade A milk for the market becomes sufficient to meet the fluid milk and cream demands during the months of seasonally low production. The testimony discloses that excesses of milk above the market needs are disposed of to manufacturing plants for manufacture into dairy products. This excess usually is disposed of to two manufacturing plants. One of these plants, the Fisher Dairy and Cheese Company of Wapakoneta, Ohio, uses this excess milk in conjunction with milk purchased directly from its own dairy farmers in the manufacture of cheese. The cheese so manufactured at this plant, together with cheese purchased in the states of Wisconsin, Illinois, Indiana and Missouri, is used by this company in the preparation of processed cheese which is sold in every state. The other plant, Swift and Company of Lima, Ohio, manufactures butter and nonfat dry milk solids, and both of these products are shipped from this plant into other states. The volume of manufactured dairy products available for shipment interstate from manufacturing plants located in or near the Lima production area is directly affected by the quantity of milk used in the Lima fluid milk market.

A plant located at Bowling Green, Ohio, distributes bottled milk in Lima and actively competes for this trade with Lima distributors whose primary outlet is the Lima fluid milk markets. This plant purchases milk from dairy farmers located in the milkshed of the Toledo, Ohio, marketing area. It handles milk for sale as fluid milk in Cleveland, Ohio, and is a pool plant under the Federal order regulating the handling of milk in the Cleveland marketing area. Milk and cream sales by this plant in Lima are included in Class I utilization under the Cleveland order. Dairy products are manufactured in this plant and are distributed in states outside of Ohio. There have been times when fluid milk and cream also were disposed of by this plant to other states than Ohio. The volume of fluid milk disposed of by this plant in Lima affects the price to all producers supplying the Cleveland market and may affect also the volume of milk supplied to the Cleveland market and the volume of manufactured dairy products disposed of in states outside of Ohio.

The Lima Board of Health has approved for distribution as Grade A fluid milk and cream in Lima, milk produced by a group of over 260 dairy farmers who deliver their milk to a milk manufacturing plant located at New Bremen, Ohio. A number of the farms of this group of dairy farmers are located in the State of Indiana. Milk produced on these Indiana farms is commingled with milk produced on farms in the State of Ohio and part of this milk so commingled at the New Bremen plant is shipped to the plant of a Lima fluid milk distributor. This distributor regularly uses such milk for bottled milk purposes, and during the season of short supplies, he transfers a portion of such supply to other Lima distributors for resale as fluid milk and cream in the Lima market. Milk in fluid form also is distributed from the New Bremen plant to other States, formerly to North Carolina and more recently to Texas.

Furthermore, prices paid to Lima producers for milk used for fluid purposes are closely related to prices paid dairy farmers for milk used in the production of manufactured milk products. This results from the fact that milk produced for manufacturing purposes can be made available quite readily for Grade A milk outlets by certain changes in methods of production, and all Grade A milk in excess of that actually used for purposes requiring the use of such a quality of milk, is available automatically and without any further change in production methods for use in any manufacturing outlet. Such relationship further results from the impossibility of being able to forecast accurately the daily production of producers and the daily requirements of fluid milk in the market, so that some milk intended for fluid distribution will become surplus and will be used in the manufacture of dairy products. The quantities of milk purchased by nearby manufacturing plants are directly affected by the market opportunities of the dairy farmers supplying the Lima fluid milk plants. This kind of price relationship is recognized in the Lima market by both producers and distributors as demonstrated by the proposals made at the hearing for pricing Class I milk and Class II milk as discussed later in this decision and by the brief filed by the handlers in this proceeding. There was testimony to the effect that prices paid by Lima distributors to producers for milk are closely related, in a similar manner, to prices paid to dairy farmers supplying nearby fluid milk markets now operating under Federal regulation such as Cleveland, Dayton-Springfield and Toledo in Ohio and Fort Wayne in Indiana.

(2) Marketing conditions justify the issuance of a market agreement and order.

The history of milk prices in the Lima market shows that until recently when a Grade A milk ordinance became effective in Lima distributors paid dairy farmers lower prices on the average than prevailed in other Ohio fluid milk markets for milk for similar uses. Milk producers have no voice in setting prices of milk sold to distributors. The only arrangement for pricing producer milk is such as the distributors may care to adopt and announce to producers. This situation led to organization of the dairy farmers furnishing milk to Lima for the purpose of negotiating more satisfactory prices and marketing conditions. Producers have, for the past five years, attempted to reach a voluntary marketing agreement with distributors. However, repeated attempts to negotiate with Lima milk distributors regarding prices and marketing problems have been unsuccessful.

The production of Grade A milk involves a heavier investment and added costs not incurred in the production of milk of the type permitted to be sold in Lima prior to the introduction of the Grade A ordinance. Producers are being asked at this time to assume such heavier investment although the market lacks any definite plan which will assure them a dependable price for Grade A milk over any period of time, or any stability of the market. Distributors pointed to the fact that prices currently being paid for Lima milk compare favorably with prices paid to producers in competing fluid milk markets, including those of Toledo and Cleveland which are under minimum

price regulation, and contended thusly that producers are receiving sufficient reward for their investment and effort in preparing Grade A milk for the market. They alleged further that competition with buyers in other fluid markets provides Lima producers with an adequate guarantee of fair prices. However, review of the price pattern which has existed in the market indicates that the current relationship of prices at Lima to prices in competing fluid milk markets has not been of long duration and does not reflect the full use value of the producers' milk. A substantial increase in producer prices was granted at Lima a short time prior to the effective date of the Grade A ordinance, which resulted in the recent favorable relationship of prices at Lima to those in competing fluid milk markets. Such a relationship prevailed at the time of the hearing. On the other hand, producer milk prices have no relation to the use made of the milk by the buyer. The current practice of all distributors to pay for all Grade A milk at a flat price based, according to their testimony, mainly on competition with other markets seems certain to lead to market instability and disorganization. In several months of the year the cost of milk for fluid purposes varies widely among distributors. When milk supplies are plentiful differences in margins encourage wide-margin distributors to cut prices to consumers creating pressure on narrow-margin distributors to reduce prices to producers, even without significant changes in the total demand for fluid milk and cream. It seems evident also from the record that in the past payments by Lima handlers have not been uniform among producers of a similar quality of milk and various price premiums and bonuses to individual producers have been added and removed without any apparent economic justification.

Past events of a market do have a direct relationship to the current situation. If this were not so, the temporary improvement of marketing conditions by voluntary action on the part of handlers just prior to a hearing on a proposed order might defeat completely the purposes and benefits to producers of this type of regulation. It would not be reasonable to conclude from the record of the hearing that recent price levels offer assurance of the maintenance of reasonable prices based upon economic conditions in the market when the history of prices paid by distributors indicates price-making largely by whim rather than by decision based on the availability of market data to both producers and distributors.

Lima milk distributors also determine the weights and butterfat tests of the producer's milk. This has resulted in several instances of dissatisfaction among producers. The testimony indicates that in numerous cases butterfat tests made by the distributors may not be relied upon as being accurate. No satisfactory check on the accuracy of these tests is available to producers. All efforts of organized producers to set up a regular system of check testing have failed for lack of cooperation by distributors. The record indicates further that in some cases when individual producers were in a position to verify their tests, reimbursement for adjustments in tests were made by distributors. Additional evidence showed that in many cases butterfat tests were not representative of the producer's milk. Often the samples of milk taken for testing purposes were found to be in a moldy and deteriorated condition and not suitable for an accurate determination of the butterfat content. It was testified that the accurate reading of a test made from a sample of milk in such a condition could not be relied upon as being an accurate test of the producer's milk. Since butterfat content is an important determinant of the return received by the producer for his milk, the present situation in this respect at Lima makes it difficult for producers to judge the reasonableness of the prices they receive and would indicate a need for a more accurate sampling and testing of the producer's milk for butterfat.

No market information is available for use of producers in forming a judgment as to what prices reflect market supply and demand conditions at any given time and will encourage an adequate supply of milk. There are no market statistics available concerning the amounts of milk disposed of to Lima consumers or as to the quantities of milk delivered by Grade A producers. There appears to be no probability that such information will be made available except through a milk marketing order.

(3) The marketing area should be defined to include the territory within the corporate limits of the city of Lima.

Producers originally proposed to include in the marketing area the city of Lima and the adjoining townships of American, Bath, Perry and Shawnee. Under the Lima health ordinance only Lima approved Grade A milk is permitted to be sold within the city limits while the small towns and communities in the townships outside the city of Lima permit the sale of various grades of milk. The proposed marketing agreement and order submitted for hearing by producers was designed to price both Grade A and "non-Grade A" milk. Since it is proposed herein to price under the order only Grade A milk from farms inspected by the Lima health department, the inclusion of such adjoining townships in the marketing are would be without purpose.

(4) It is concluded that only Grade A milk from producers who hold Grade A certificates issued by the Lima health department should be subject to the minimum price provisions of the order.

Grade A milk is relatively new to the Lima market. The health department began enforcement of a Grade A ordinance on July 1, 1948. The market is supplied with Grade A milk from three sources: Farms holding Grade A certificates issued by the Lima health department, a plant at New Bremen, Ohio, supplied with milk from a number of farms approved by the health department of another community and presently accepted by the Lima health department as Grade A, and a plant at Bowling Green, Ohio, receiving some milk approved as Grade A by the Wood County health authorities. It is anticipated that the New Bremen supply will be discontinued whenever a sufficient number of farms have been approved by the Lima health department to supply fully the needs of the market. Handlers also receive non-Grade A milk but such milk is limited, under the applicable health regulations within the marketing area, to manufactured uses. The latter type of milk may be sold as fluid milk in many communities outside the city limits of Lima where Grade A milk is not required for fluid purposes. Handlers proposed, and producers later concurred, to price only the Grade A milk that is produced on farms holding Grade A certificates from the Lima health department.

Although producers originally proposed that both Grade A and non-Grade A milk should be priced on equivalent class price basis, it appears that their primary purpose in pricing the non-Grade A milk supply was to assure equity in the cost of Class I milk to all handlers in the event some milk not meeting Grade A quality requirements might be disposed of as Class I milk within the marketing area. There is no information in the record from which it might reasonably be concluded that an appreciable amount of non-Grade A milk actually finds its way into Class I milk uses within the marketing area. It was the opinion of the proponents that most, if not all, of the milk now being sold within the marketing area is of Grade A quality. Since it has been concluded that the marketing area should be limited to the City of Lima where Grade A requirements are in force, and because the evidence indicates that most, if not all, of the milk being sold in the marketing area is of Grade A quality, it does not appear necessary or desirable to include non-Grade A milk under the class price or uniform price provisions. Producers indicate agreement with this position in their brief.

The Lima health department indicated that it intends within the not too distant future to have the entire milk supply for the city come from farms holding Lima Grade A certificates. It is felt that an additional number of local dairy farmers should be encouraged to change to Grade A milk production so as to insure the market of an adequate supply of pure and wholesome milk. Such increase in local production presumably would replace gradually the Grade A milk from New Bremen that is inspected by another health authority and is being received presently in the Lima market on a temporary basis. Hence, it would not be appropriate to price the New Bremen milk because the evidence indicates that it would displace a large volume of Lima inspected milk in the higher-valued uses and that there will be no permanent need for it for such uses in the Lima market. However, because this milk is being shipped regularly to the market at the present time as milk of acceptable quality and is commingled with producer milk in supplying the fluid milk and cream trade of the marketing area, it is necessary to provide in the regulation certain provisions for its allocation in the classification of milk. It is proposed that such "other source" milk be allocated in a manner such that it may not replace pro-

ducer milk in the higher-valued uses and tend to decrease producer returns. In this and in certain other respects other source milk will be subject to regulation, but not to the extent that the dairy farmers producing such milk will share in the pricing and pooling benefits of the program. The dairy farmers shipping to Bowling Green receive a minimum uniform price computed under the terms of the order regulating the handling of milk in the Cleveland, Ohio, marketing area. The definitions of "producer", "handler", "Grade A milk", and "fluid milk plant" provided are designed to carry out the above conclusion.

(5) It is concluded that two classes of milk should be established. Class I milk should include all skim milk and butterfat disposed of in fluid form for consumption as milk, skim milk, flavored milk, flavored milk drinks and buttermilk (except where it is necessary to dispose of certain items for livestock feed); sweet or sour cream; any other products defined as "milk products" by the Lima Board of Health; and any skim milk and butterfat not accounted for as Class II milk. Class II milk should include all skim milk and butterfat used to produce any other product than those specified in Class I milk; actual plant shrinkage of skim milk and butterfat received in producer milk (but not to exceed 2 percent of such receipts); and, actual plant shrinkage with respect to "other source" milk received.

Producers proposed classification into two classes, approximately as outlined above. Handlers, on the other hand, proposed three classes with fluid cream classified separately from fluid milk. Under the handlers' plan fluid milk would be placed in Class I, fluid cream in Class II, and manufactured milk products in Class III.

The products included in Class I milk are those required to be made or processed from Grade A milk. In view of the fact that fluid cream must be obtained from Grade A milk and the adoption of the weight of butterfat and skim milk method for computing the volume so utilized, it is concluded that the handlers' proposal should not be adopted. Having reached this conclusion it follows that the designation of certain uses as Class III milk is not necessary. The products included in Class II milk are those which the health department does not require to be made or processed from Grade A milk. Such products, although they may contain Grade A milk, must be disposed of in the same competitive field as products made from non-Grade A milk. It is considered necessary to classify certain products as Class II milk in order to permit the free movement of any excess of milk into manufacturing channels without burdensome competitive disadvantage to handlers when producer receipts are in excess of the market demand for Grade A milk.

On the matter of milk shrinkage producers presented evidence with respect to other representative fluid milk markets to indicate that the shrinkage on producer milk allowed as Class II milk should be limited to 2 percent of the volume of milk received from producers. Handlers proposed that such shrinkage allowance be established at a limit of 2½ percent of producer receipts, but did not present convincing evidence either in support of their position or in opposition to the proposal made by producers. It is concluded that the allowable plant shrinkage on producer milk should be limited to 2 percent. Such allowance would be in line with the evidence as to the experience in other markets under regulation and would appear to be equitable to handlers. Any shrinkage in excess of that allowed should be classified as Class I milk. No limit was proposed or has been adopted with respect to the amount of shrinkage on other source milk allowed as Class II milk since such milk would be deducted from the lowest available use classification under the allocation provisions.

In the case of transfers or diversions of milk, it is proposed that the responsibility for correct classification be placed on the handler who first receives the milk. In the event milk is transferred without adequate proof of utilization such milk should be classified as Class I milk.

To determine the utilization of producer milk by each handler, it is concluded that other source milk should be subtracted in sequence beginning with Class II milk. Since Lima inspected Grade A milk is the principal source for the Class I milk requirements of the market, this sequence in allocation is appropriate to give adequate protection to producers relative to the returns for milk used as Class I milk.

(6) Class I milk prices should be determined by adding certain differentials to a basic formula price representing a general level of manufacturing milk prices. Class II milk prices should be based on the average of prices paid for milk by certain nearby milk manufacturing plants.

All parties participating in the hearing concurred in all pricing proposals, except as to the amount of the Class I price differentials to be employed and to the prices of skim milk and butterfat disposed of as cream for fluid consumption. The monthly average price paid to dairy farmers for milk by 18 selected milk manufacturing plants in Michigan and Wisconsin was proposed by the producers as an appropriate basic price formula for use in determining the Class I price. The stated purpose of such basic price formula is to take into account the economic factors underlying the price of milk for manufacturing uses which bear relation to local market prices. It was pointed out further that the 18 plant price proposed has been the effective basic formula price in most months under Federal orders in effect in competing markets (Toledo, Dayton and Cleveland).

As indicated earlier the record discloses the overlapping of the milksheds of the Lima and Cleveland markets. It also reveals price competition between Lima and other fluid milk markets under Federal regulation. Such markets employ alternate basic price formulas based on the market prices of butter and cheese, and butter and nonfat dry milk solids. The evidence shows in addition that plants manufacturing the principal milk products, such as butter, cheese, evaporated milk, and nonfat dry milk solids also draw supplies from the same general area as do Lima milk distributors.

Because manufacturing milk may shift readily from one of these products to another, the differentials for Class I milk should be set so that when added to the highest price for milk for manufacturing purposes they will provide the necessary incentive to producers to assume the added costs, effort and risk involved in producing milk under Lima Grade A milk inspection. It is important also that the basic formula price at Lima be aligned closely with those in the competing fluid milk markets. In view of the fact that a plant located at Lima receives milk from the same producing area as Lima for shipment to Cleveland it is determined that basic price changes at Lima should follow closely those occurring under the Cleveland order. It is concluded that this can be best accomplished by adopting the alternate basic price formulas (butter—cheese and butter—nonfat dry milk solids) employed in the Cleveland order to operate in conjunction with the type of formula proposed by producers. A closer alignment of the basic formula price at Lima with those in the other regulated fluid markets should result also from this action.

Producers proposed that Class I prices be determined by adding to the basic formula price a differential of $1.00 for the months of July, August, February and March, $0.90 for the months of April, May and June and $1.25 for all other months. Distributors proposed the substitution of differentials of $0.80, $0.70 and $1.00. The producers' proposal would provide an annual average Class I price differential 3 cents above the corresponding differential in the Cleveland market and 10 cents above those in the Dayton and Toledo markets.

The testimony indicates that general economic conditions and business activity in the Lima area point to a continued good demand for fluid milk and milk products. The record indicates that the cost of labor, building material, machinery, equipment and supplies have shown an upward trend recently. Although there has been a recent decline in the cost of feed grains this decline has been offset to a high degree by increased costs of other materials and labor which must be incurred by Lima producers to qualify for Grade A certificates and to maintain the production of high quality milk at a more uniform level than is generally required of farmers producing milk for manufacturing purposes. Consequently, recent increases in the costs of the latter items have affected the farmers producing Lima Grade A milk to a greater extent than those farmers supplying manufacturing plants. The record indicates that a substantial initial investment is required to provide facilities to meet the requirements for the production of Grade A milk for the Lima market. Furthermore, the day-to-day expense of properly caring for the necessary equipment, cooling and caring for the milk, and the care of the milk barn and milk house now are substantially greater than those required for producing milk for manufac-

turing purposes. To the present, the level of local production of Grade A milk has been insufficient to meet the demands of Class I milk in the Lima market. It has been necessary for the Lima health department to approve substantial supplies of Grade A milk inspected by another health department in order that handlers might supplement their locally produced Grade A milk receipts.

To reflect these additional costs in the production of Grade A milk and to furnish the necessary incentive for other dairy farmers to prepare for the production of Grade A milk so as to provide a sufficient quantity of pure and wholesome milk for the marketing area, the prices of Grade A milk should be established at a substantially higher level than the price of milk produced for manufacturing purposes. Also, under present conditions prices in the Lima market should be somewhat higher than in the other fluid milk markets drawing milk supplies from the same area. The evidence indicates that costs of producing milk to conform to Lima Grade A requirements are somewhat greater currently than those of producing milk for such other markets. Differentials proposed by distributors would result in prices lower than those in competing markets, although it must be concluded from testimony regarding competing market prices that such lower prices would not be adequate to insure a sufficient supply of producer milk of Grade A quality for the Lima market.

Class I prices resulting from the addition to the proposed basic formula price of differentials of $1.15 for the delivery periods September through January, inclusive, $0.85 for April, May, and June, and $1.00 for all other months should establish producer prices at a reasonable level that will maintain a sufficient quantity of approved milk. However, as stated previously, the record indicates a deficiency of Lima inspected Grade A milk for the balance of this year. In order to provide an incentive for producers to qualify for Grade A milk production to thus insure a sufficient supply, it is considered necessary that the price differential of Class I milk be set at the level of $1.15 for the balance of 1949.

A seasonal change in the differentials seems desirable to encourage relatively lower spring and higher fall production in order to encourage a closer correlation of production and demand. Seasonal variation in differentials also would bring about a closer alignment each month between milk prices in Lima and in surrounding fluid milk markets since the seasonal pattern of prices proposed herein follows closely that used in these surrounding markets.

Distributors testified that cream distribution costs are higher than for milk and, therefore, that the producer prices for skim milk and butterfat used to produce cream for fluid consumption should be lower than those established in connection with fluid milk. Producers contended any such higher costs should be reflected in the price of cream to consumers. In consideration of the fact that cream and most fluid milk by-products disposed of for fluid consumption must be made from Grade A milk, a lower producer price with respect to such cream has not been adopted.

Lima milk distributors have very limited manufacturing facilities and milk received in excess of fluid market needs is disposed of mostly to nearby manufacturing plants. Producers proposed that the price for Class II milk be determined by averaging, for each month, the prices paid dairy farmers by three local dairy manufacturing plants. Handlers proposed use of the same prices and also those paid by two additional plants which customarily handle a large proportion of the seasonal surplus of the market which would be classified as Class II. Differences in prices paid by the five plants usually do not exceed five cents per hundredweight in any month. It is therefore concluded that the price for such milk (Class II milk) should be determined by averaging for each month, the prices paid for milk received from dairy farmers by five local dairy manufacturing plants, including the two plants involved in handling surplus milk.

Prices to producers would be announced on the basis of milk testing 3.5 percent of butterfat, with a butterfat differential to apply to milk testing other than 3.5 percent in making payments to producers. The announcement of prices on this basis follows the custom of the market and is consistent with the positions taken by both producers and handlers.

Producers proposed a butterfat differential formula which produces a relatively high return for butterfat over 3.5 percent and a relatively large deduction from the price of 3.5 percent milk for milk testing less than 3.5 percent. The provision establishes the butterfat differential on a basis equivalent to the weighted average value of all butterfat in producer milk according to its use in the two classes. The testimony indicates that most of the available butterfat in milk of producers will be utilized in the higher-valued class (Class I milk) and that relatively minor quantities will be disposed of as surplus in view of the fact that fluid cream for the market must be derived from producer milk and is included in Class I milk. This requirement differs from those in many other markets. The formula will reflect the average value of butterfat in all uses made by handlers.

The purchasing power of milk during the base period August 1909–July 1914 cannot be satisfactorily determined from available statistics of the Department of Agriculture. There are no available records of prices paid to dairy farmers for milk for the Lima market for either the August 1909–July 1914 or the August 1919–July 1929 base periods. Prices, however, are available for the nearby fluid milk market of Toledo, Ohio, for the base period August 1919–July 1929, and are included in record of the Lima hearing. General production conditions in the Toledo milk shed are very similar to those prevailing in the Lima milk shed. It is therefore determined that the purchasing power of milk can be satisfactorily determined from available statistics of the Department of Agriculture for the period August 1919–July 1929.

Prices being paid to dairy farmers for milk at the time of the hearing as testified by Lima distributors were close to prices paid for milk for corresponding uses in the Toledo market. The latest issue of the Ohio Monthly Dairy Report available in the record shows that the market average price to producers for all milk, including premiums, for May 1948 was $5.18 for the Lima market and $5.10 for the Toledo market. The parity price for all milk (3.5 percent butterfat basis) at Lima was $4.51 per hundredweight in September 1948.

It is estimated that the uniform price resulting from the proposed class price formulas would average slightly above the average of uniform prices which will prevail in the Toledo market. This difference is justified by production conditions peculiar to the Lima market as explained hereinabove. To the extent that the recommended class prices will result in uniform prices for Lima producers exceeding such parity level, they are fully justified on the basis of evidence concerning the price and supplies of feeds and other economic conditions affecting market supply and demand for milk, and to such extent the parity price level is not reasonable.

(7) It is concluded that a "market-wide" pool should be established for the purpose of distributing among producers the returns for their milk.

Under the market-wide type of pool all producers would receive a uniform price computed on the basis of the combined classification value of producer milk of all handlers. The "individual handler" pool also was considered at the hearing. Under the latter type of pool a uniform price for each handler would be computed on the basis of his particular utilization of milk.

Producers discussed the relative merits of both the individual handler pool and the market-wide pool. They alleged the following in regard to the two types of pools: The individual handler pool is simpler to operate; lends to prompt determination of the uniform prices; does not require an adjustment fund to equalize the handler's payments; and, does not attract large market surpluses as might be possible under the market-wide pool. The market-wide pool contributes to the stability of the market in that it does not induce producers to shift between handlers; it permits, however, an easier shift of producers in the event it is necessary to adjust supplies between handlers; all producers receive the same uniform price; and, handlers who have facilities and who ordinarily carry the market surplus would be able to pay to producers the same uniform price as other handlers.

Distributors made the following points in their support of a market-wide pool: Handlers are primarily in the fluid milk distribution business and dispose of surplus milk to manufacturing plants rather than to one particular handler for use in his manufacturing operations; and, there probably would be very little difference in the uniform prices paid by handlers under an individual handler pool although whatever differences might occur would be just sufficient to create dissatisfaction among producers.

The testimony indicates that historically all distributors in the market have tended to pay approximately the same price to producers. It is possible that an individual-handler pool would establish as many different uniform prices as there are handlers in the market. This would tend to induce producers to shift from handlers with relatively low uniform prices to handlers with relatively high uniform prices. There was no evidence to indicate that there is any need at this time for reapportionment of milk supplies between handlers. In the absence of operating experience in the market, it is concluded that a greater degree of stability of supply and price is more likely if the market-wide pool is adopted at the outset of the program.

There was testimony also to the effect that a handler who distributes milk in this market area is regulated already by the Federal milk order in effect in the Cleveland, Ohio, marketing area. Inasmuch as such handler is engaged in the distribution of fluid milk in the other regulated market, it is concluded that he may continue as a handler regulated primarily under such order. In order to prevent any competitive disadvantage to handlers under the Lima order; it is provided, however, that such handler be required to pay into the producer-settlement fund under the Lima order any amount by which the Lima Class I milk price exceeds the comparable price under the other regulation with respect to Class I milk disposed of from his plant directly or indirectly into the Lima marketing area.

(8) Certain other provisions should be adopted in order to carry out administratively the purposes of the regulation.

(a) *Administrative assessments.* Each handler should be required to pay to the market administrator, as his prorata share in the costs of administration of the order, not more than three cents per hundredweight, or such lesser amount as the Secretary may from time to time prescribe, on receipts of (1) producer milk and (2) other source milk classified as Class I milk.

The market administrator is required to verify the disposition of all milk received, and therefore other source milk, as well as producer milk, should bear an apropriate share of the administrative cost. Substantial quantities of other source milk are received by handlers and sold in direct competition with Grade A milk from producers in Class I uses, the primary outlet for producer milk. A charge on other source milk used as Class I milk will apportion the expenses more equitably among handlers. Both handlers and producers recognize that the market administrator must have the necessary funds to enable him to administer properly the terms of the order. A witness with experience in the administration of other orders testified as to the functions of the market administrator and estimated the costs of administration in a market such as Lima. In view of the anticipated volume of milk on which the rate would apply, a maximum rate of three cents per hundredweight should be adopted to guarantee sufficient administrative income. In the event a lesser amount proves upon experience to be sufficient for proper administration, provision should be made to enable the Secretary to reduce the assessment accordingly without the necessity of amending the order. The act provides that such assessments shall be the means of financing costs of administration.

(b) *Deductions for marketing services.* In conformity with the act, provision should be included for furnishing marketing services for producers who do not belong to a cooperative association performing such services, with appropriate deductions therefor. Such provision is specifically authorized by the act, and the proponents of the order proposed a rate of assessment of 4 cents per hundredweight with respect to the milk of such producers to cover expenses in connection with the services to be rendered. The cost of performing services with respect to the milk of producers affected by this provision will vary with the amount of milk involved at any given time. The evidence shows that the rate of four cents per hundredweight as proposed by producers is similar to that currently provided in the order at Columbus, Ohio. The proponents, who have had experience with such check-sampling, weighing and testing programs under another similar regulation at Toledo, Ohio, expressed the opinion based on such experience that these services could be accomplished within the four-cent rate. No testimony was offered to show the propriety of another rate of assessment. The deductions for these services from payments to producers should be at the rate of four cents per hundredweight of milk. The balance of the amount received would be used to cover costs of market information to be furnished by the market administrator. In the event any qualified cooperative association of producers is determined to be performing such services for its members, handlers would be required to pay to the cooperative association such deductions as are authorized by the members of the association.

(c) *Reports and records.* Provisions should be included in the order for the purpose of requiring handlers to maintain adequate records and to make certain reports. Such records and reports are necessary for the purpose of determining proper classification, pricing and payment relative to the milk of producers. Producers proposed that such reports be filed with the market administrator on or before the 5th day after the end of the delivery period. Handlers, on the other hand, suggested filing on or before the 7th day following the delivery period. It is necessary to allow sufficient time following the delivery period for the compiling and filing of reports by the handler. On the other hand, the computation of the uniform price and payments to producers should not be unduly delayed. It is concluded that the 7th day following the delivery period is the latest date on which such reports should be filed with the market administrator.

(d) *Audits.* Provisions should be included in the order to provide for the auditing of each handler's reports and records to insure producers the proper returns for milk as provided for in the other sections of the order. It is necessary that the handler provide also whatever facilities are necessary to verify reports or to ascertain the correct information regarding the receipts and utilization of milk and payments to producers.

(e) *Payments to producers.* Although the uniform price is computed only once a month, provision should be made for payment to producers semi-monthly. Producers proposed an "advance" payment covering milk delivered during the first 15 days of the delivery period to be made on or before the last day of the delivery period. Producers customarily have been paid twice a month and it is concluded that this practice should be continued in the interest of prompt payment. Handlers offered no opposition to this plan of payment. The record indicates that the mid-delivery period payment should be fixed at the rate of the uniform price for the preceding delivery period. The final payment for each delivery period should be made on or before the 18th day after the end of such delivery period. Dates for the filing of handler reports and for the computation and announcement of the uniform price have been adjusted in a manner which will permit handlers to make required payments both to producers and the producer—settlement fund within the respective dates prescribed. Thus, a reasonably adequate time is allowed handlers in which to make final payments to producers. Since no uniform price would be available on which to compute the "advance" payment for the first delivery period, it is concluded that the average price paid by handlers covered by a similar regulation at Toledo, Ohio, should be employed in making the first of such "advance" payments.

(f) *Other administrative provisions.* The marketing agreement and order should include other general administrative provisions which are common to all orders and have been found from experience to be necessary for proper and efficient administration. These provisions provide for the selection of a market administrator, define his powers and duties, prescribe the information to be reported by handlers each month, set forth the rules to be followed by the market administrator in making computations required by the order, and provide for a plan for liquidation of the order in the event of its suspension or termination.

It is provided further that a "producer-handler" shall be exempt from regulation for all practical purposes except for the requirement that he shall file reports as may be requested by the market administrator. The producer-handler maintains control of his milk until ultimate disposition and in this respect his situation differs from the regular producer. Unlike the producer who delivers milk to a handler, he is in a position to know how his milk is being used and to have a voice in the terms on which it is sold. On the other hand, such persons frequently change their status. It is necessary therefore for the market administrator to have authority to require reports from the producer-

handler in order to ascertain whether such a person has become a handler purchasing milk from other producers.

The order provides also for the retention of necessary records by handlers and for the ultimate termination of obligations. It is necessary for handlers to retain records in order to prove the utilization of milk and the payments made to producers. It is necessary that these records be kept for a substantial period of time since some transactions with respect to the handling of the producers' milk are not completed and audited until several months after producers have delivered the milk to the handler's plant. Detailed records of this kind soon assume tremendous physical proportions and become burdensome for this reason. It is necessary that a definite time period be provided within which handlers must maintain their records and after which they will be relieved of so doing. The order should provide that handlers shall retain records for three years after the end of the delivery period or month to which such records relate. In terms of the volume of records which would be retained and the types of transactions involved in disposing of milk, the retention of records for three years is concluded to be a reasonable requirement. If litigation is in progress, it may be necessary to require records to be retained for a longer period and provision should be made for this contingency.

The order should provide for the termination of obligations to handlers after a reasonable period of time has elapsed. Without such a provision handlers may file claims which, because the period involved might extend back over many years, could be in substantial amounts. This creates uncertainties which could endanger the stability of the market and lead to serious inequities. The order should provide that any obligation to pay a handler shall terminate two years after the month in which the milk was received if an underpayment is claimed, or within two years after payment was made if a refund is claimed, unless within such period of time, the handler files a petition, pursuant to section 8c (15) (A) of the act, claiming such money. Handlers also need the protection of provisions terminating their obligations to make payments. Since handlers cannot be forewarned always as to contingent liabilities, it is extremely difficult and burdensome for them to make adequate provision therefor by setting up reserves or by taking other precautionary measures. The obligation of any handler to pay money should, except under certain extraordinary conditions, such as litigation, terminate two years after the last day of the month during which the market administrator receives the handler's report of utilization of the milk involved in such obligation, unless within such two-year period the market administrator notifies the handler in writing that such money is due and payable. It is concluded that in general a period of two years is a reasonable time within which a market administrator should complete his auditing and inspection work and render any billings for money due under the order. Provisions are necessary also, as contained in the order included in this decision, to meet such contingencies as failure of the handler to submit required books and records and to deal with situations where fraud or willful concealment of information may be involved.

It was proposed that if a handler fails to make the required reports or payments, his name will be publicly announced by the market administrator, unless otherwise directed by the Secretary. Such a provision is provided for by the act and it is concluded that its adoption will facilitate the enforcement of the terms of the order.

General findings. (a) The proposed marketing agreement and the order and all of the terms and conditions thereof will tend to effectuate the declared policy of the act;

(b) The prices calculated to give milk produced for sale in the said marketing area a purchasing power equivalent to the purchasing power of such milk as determined pursuant to section 2 and section 8e of the act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for such milk, and the minimum prices specified in the proposed marketing agreement and the order are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(c) The proposed marketing agreement and the order will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, a marketing agreement upon which hearings have been held.

Proposed findings and conclusions. Briefs were filed on behalf of both the producers' association and the majority of the handlers. The briefs contained proposed findings of fact, conclusions and argument with respect to the proposals discussed at the hearing. Every point covered in the briefs was carefully considered along with the evidence in the record in making the findings and reaching the conclusions hereinbefore set forth. To the extent that such suggested findings and conclusions contained in the briefs are inconsistent with the findings and conclusions contained herein the request to make such findings or to reach such conclusions are denied on the basis of the facts found and stated in connection with the conclusions in this decision.

Recommended marketing agreement and order. The following order is recommended as the detailed and appropriate means by which these conclusions may be carried out. The proposed marketing agreement is not included because the regulatory provisions thereof would be the same as those contained in the order:

SECTION 1. *Definitions.* The following terms as used herein shall have the following meanings:

(a) "Act" means Public Act No. 10, 73d Congress, as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (7 U. S. C., 1946 ed. 601 et seq.).

(b) "Secretary" means the Secretary of Agriculture, or such other officer or employee of the United States authorized to exercise the powers or to perform the duties of the said Secretary of Agriculture.

(c) "U. S. D. A." means the United States Department of Agriculture.

(d) "Person" means an individual, partnership, corporation, association, or any other business unit.

(e) "Lima, Ohio, marketing area" hereinafter called the "marketing area" means the territory within the corporate limits of Lima, in the County of Allen, State of Ohio.

(f) "Delivery period" means the calendar month, or that portion of the calendar month, during which the provisions of this order or of any amendment thereto are effective.

(g) "Grade A milk" means milk produced by a person holding a dairy farm inspection permit issued by the Lima, Ohio, Board of Health for the production of Grade A milk, which is permitted by such health authority to be disposed of as Grade A milk.

(h) "Fluid milk plant" means a plant or other facilities used in the preparation or processing of Grade A milk all or a portion of which is sold or disposed of in the marketing area as Class I milk.

(i) "Producer" means any person who produces Grade A milk received (1) at a fluid milk plant, or (2) at any other plant by diversion from a fluid milk plant for the account of a handler or a cooperative association.

(j) "Producer milk" means milk produced by one or more producers under the conditions set forth in (i) of this section.

(k) "Handler" means any person who (1) operates a fluid milk plant; (2) either directly or indirectly disposes of milk, skim milk, buttermilk, or flavored milk drink to a wholesale or retail stop(s) in the marketing area other than a fluid milk plant; or (3) any cooperative association with respect to producer milk diverted by it from a fluid milk plant to any plant not a fluid milk plant for the account of such association.

(l) "Producer-handler" means any person who is both a producer and a handler and who receives no milk from other producers: *Provided*, That (1) the maintenance, care and management of the dairy animals and other resources necessary to produce milk is the personal enterprise of and at the personal risk of such person in his capacity as a producer and (2) the processing, packaging, and distribution of the milk is the personal enterprise of and at the personal risk of such person in his capacity as a handler.

(m) "Other source milk" means all skim milk and butterfat received other than producer milk, except (1) receipts from a producer-handler, and (2) any non-fluid milk product received and disposed of in the same form.

(n) "Cooperative Association" means any cooperative marketing association of producers which the Secretary determines, after application by the association: (1) To be qualified under the provisions of the act of Congress of February 18, 1922, as amended, known as the

"Capper-Volstead Act"; (2) to have full authority in the sale of milk of its members and to be engaged in making collective sales or marketing milk or its products for its members; and (3) to have all of its activities under the control of its members.

SEC. 2. *Market Administrator*—(a) *Designation.* The agency for the administration hereof shall be a market administrator, selected by the Secretary, who shall be entitled to such compensation as may be determined by, and shall be subject to removal by the Secretary.

(b) *Powers.* The market administrator shall have the following powers with respect to this order:

(1) To administer its terms and provisions;

(2) To receive, investigate, and report to the Secretary, complaints of violations;

(3) To make rules and regulations to effectuate its terms and provisions; and

(4) To recommend amendments to the Secretary.

(c) *Duties.* The market administrator shall perform all duties necessary to administer the terms and provisions of this order, including, but not limited to, the following:

(1) Within 30 days following the date on which he enters upon his duties, execute and deliver to the Secretary a bond, effective as of the date on which he enters upon such duties, in an amount and with surety thereon satisfactory to the Secretary;

(2) Employ and fix the compensation of such persons as may be necessary to enable him to administer its terms and provisions;

(3) Obtain a bond in a reasonable amount and with reasonable surety thereon covering each employee who handles funds entrusted to the market administrator;

(4) Pay out of the funds provided by section 8:

(i) The cost of his bond and of the bonds of his employees;

(ii) His own compensation; and

(iii) All other expenses, except those incurred under section 9, necessarily incurred by him in the maintenance and functioning of his office and in the performance of his duties;

(5) Keep such books and records as will clearly reflect the transactions provided for herein, and upon request by the Secretary surrender the same to such other person as the Secretary may designate;

(6) Publicly announce, unless otherwise directed by the Secretary, by posting in a conspicuous place in his office and by such other means as he deems appropriate, the name of any person who, within 10 days after the day upon which he is required to perform such acts, has not made (i) reports pursuant to section 3, or (ii) payments pursuant to sections 7, 8, 9, 10, or 11 (a);

(7) Submit his books and records to examination by the Secretary and furnish such information and reports as may be requested by the Secretary;

(8) Audit records of all handlers to verify the reports and payments required pursuant to the provisions hereof; and

(9) Publicly announce, by posting in a conspicuous place in his office and by such other means as he deems appropriate, the prices determined for each delivery period as follows:

(i) On or before the 5th day after the end of such delivery period, the minimum prices for skim milk and butterfat for each class computed pursuant to section 5, and

(ii) On or before the 12th day after the end of such delivery period, the uniform price computed pursuant to section 6 (b) and the butterfat differential computed pursuant to section 7 (f).

SEC. 3. *Reports, records, and facilities*—(a) *Delivery period reports of receipts and utilization.* On or before the 7th day after the end of each delivery period, each handler, except a producer-handler, shall report to the market administrator, in the detail and on forms prescribed by the market administrator, the following information with respect to all milk received from producers, all milk, skim milk, cream, and milk products received from other handlers, all other source milk received during the delivery period at his fluid milk plant(s), and milk diverted pursuant to sections 1 (i) (2) and 11 (c):

(1) The quantities of butterfat and skim milk contained in such receipts, and their sources;

(2) The utilization of such receipts; and

(3) Such other information with respect to such receipts and utilization as the market administrator may prescribe.

(b) *Other reports.* Each handler shall report to the market administrator, in the detail and on forms prescribed by the market administrator, as follows, except that each producer-handler shall make reports to the market administrator at such time and in such manner as the market administrator may request: On or before the 22d day after the end of each delivery period his producer payroll for the delivery period, which shall show (1) the pounds of milk and the percentages of butterfat contained therein received from each producer; (2) the amounts and dates of payments to each producer or cooperative association; and (3) the nature and amount of each deduction or charge involved in the payments referred to in subparagraph (2) of this paragraph.

(c) *Records and facilities.* Each handler shall maintain, and make available to the market administrator during the usual hours of business, such accounts and records of all of his operations and such facilities as, in the opinion of the market administrator, are necessary to verify reports, or to ascertain the correct information with respect to (1) the receipts and utilization of all skim milk and butterfat received, including all milk products received and disposed of in the same form; (2) the weights and tests for butterfat, and for other contents, of all milk and milk products handled; and (3) payments to producers and cooperative associations.

(d) *Retention of records.* All books and records required under this order to be made available to the market administrator shall be retained by the handler for a period of three years to begin at the end of the calendar month to which such books and records pertain: *Provided,* That if, within such three-year period, the market administrator notifies a handler in writing that the retention of such books and records or of specified books and records is necessary in connection with a proceeding under section 8c (15) (A) of the act or a court action specified in such notice, the handler shall retain such books and records, or specified books and records, until further written notification from the market administrator. The market administrator shall give further written notification to the handler promptly upon the termination of the litigation or when the records are no longer necessary in connection therewith.

SEC. 4. *Classification*—(a) *Basis of classification.* All skim milk and butterfat (in any form) received at a fluid milk plant as (1) producer milk, (2) a transfer from another fluid milk plant, and (3) other source milk, shall be classified in the classes set forth in paragraph (b) of this section.

(b) *Classes of utilization.* Subject to the conditions set forth in paragraphs (c), (d), (e) and (f) of this section, the classes of utilization of milk shall be:

(1) Class I milk shall be all skim milk and butterfat disposed of (i) in fluid form as milk, skim milk, buttermilk (except for livestock feed), flavored milk, flavored milk drinks and sweet or sour cream; (ii) as any other milk product defined by the Lima, Ohio, Board of Health; and (iii) as all skim milk and butterfat not accounted for as Class II milk.

(2) Class II milk shall be all skim milk and butterfat accounted for as (i) used to produce a product other than those specified in subparagraph (1) of this paragraph, (ii) actual plant shrinkage of skim milk and butterfat received in producer milk but not to exceed 2 percent of such receipts of skim milk and butterfat, respectively, and (iii) actual plant shrinkage of skim milk and butterfat in other source milk received: *Provided,* That if producer milk is utilized as milk, skim milk, or cream in conjunction with other source milk, the shrinkage allocated to each shall be computed pro rata according to the proportions of the volume of skim milk and butterfat, respectively, received from each such source to their total.

(c) *Interplant transfers of milk, cream and skim milk.* Skim milk and butterfat disposed of in the form of milk, cream, or skim milk by a handler to any milk processing or milk manufacturing plant, including any other fluid milk plant, shall be Class I milk, unless (1) Class II use is indicated in writing to the market administrator by both the transferring handler and the receiver on or before the 7th day after the end of the delivery period within which such disposition was made, and (2) the receiver maintains books and records showing the utilization of all skim milk and butterfat at his plant which are made available if requested by the market administrator for the verification of such reported utilization: *Provided,* That in no event shall the amount so reported be

greater than the total amount so used by the receiver.

(d) *Responsibility of handlers and reclassification of milk.* (1) All skim milk and butterfat shall be classified as Class I milk unless the handler who first received such skim milk or butterfat proves to the market administrator that such skim milk or butterfat should be classified otherwise.

(2) Any skim milk or butterfat classified in one class shall be reclassified if used or reused by such handler or by another handler in another class.

(e) *Computation of skim milk and butterfat in each class.* For each delivery period the market administrator shall correct for mathematical and for obvious errors the delivery period report submitted by each handler and compute the total pounds of skim milk and butterfat, respectively, in Class I milk and Class II milk for such handler.

(f) *Allocation of skim milk and butterfat classified.* The market administrator shall determine the classification of skim milk and butterfat received from producers as follows:

(1) Butterfat shall be allocated in the following manner: (i) Subtract from the total pounds of butterfat in Class II milk the total pounds of butterfat shrinkage pursuant to paragraph (b) (2) (ii) and (iii) of this section.

(ii) Subtract from the pounds of butterfat remaining in each class the pounds of butterfat received from other handlers and used in such class.

(iii) Subtract from the pounds of butterfat remaining in each class, in series beginning with the Class II utilization, the pounds of butterfat in other source milk other than butterfat shrinkage in other source milk subtracted pursuant to subdivision (i) of this subparagraph.

(iv) Add to the pounds of butterfat remaining in Class II the pounds of butterfat shrinkage in producer milk subtracted pursuant to subdivision (i) of this subparagraph; and if the remaining pounds of butterfat in all classes exceed the pounds of butterfat received in producer milk, subtract such excess from the remaining pounds of butterfat in each class, in series beginning with the Class II utilization. The pounds of butterfat remaining shall be the pounds in each class allocated to producer milk.

(2) Skim milk shall be allocated to each class in accordance with the same procedure as outlined for butterfat in subparagraph (1) of this paragraph.

SEC. 5. *Minimum class prices.* — (a) *Basic formula price.* The basic formula price per hundredweight of milk to be used in computing the minimum prices for Class I milk provided in this section shall be the highest of the prices computed by the market administrator pursuant to subparagraphs (1), (2), and (3) of this paragraph:

(1) The average of the basic (or field) prices per hundredweight (computed to the nearest tenth of a cent) reported to have been paid, or to be paid, for milk of 3.5 percent butterfat content received from farmers during the calendar month within which the delivery period occurs at the following plants or places for which prices are reported to the market administrator by the U. S. D. A. or by the companies listed below:

Company and Location

Borden Co., Black Creek, Wis.
Borden Co., Greenville, Wis.
Borden Co., Mount Pleasant, Mich.
Borden Co., New London, Wis.
Borden Co., Orfordville, Wis.
Carnation Co., Berlin, Wis.
Carnation Co., Jefferson, Wis.
Carnation Co., Chilton, Wis.
Carnation Co., Oconomowoc, Wis.
Carnation Co., Richland Center, Wis.
Carnation Co., Sparta, Mich.
Pet Milk Co., Belleville, Wis.
Pet Milk Co., Coopersville, Mich.
Pet Milk Co., Hudson, Mich.
Pet Milk Co., New Glarus, Wis.
Pet Milk Co., Wayland, Mich.
White House Milk Co., Manitowoc, Wis.
White House Milk Co., West Bend, Wis.

(2) The price per hundredweight computed by the market administrator from the following formula:

(i) Multiply by 6 the arithmetic average of the daily wholesale prices per pound of 92-score butter on the Chicago market as reported by the U. S. D. A. during the calendar month within which the delivery period occurs;

(ii) Add an amount equal to 2.4 times the average weekly prevailing price per pound of "Twins" during the calendar month within which the delivery period occurs on the Wisconsin Cheese Exchange at Plymouth, Wisconsin: *Provided,* That if the price of "Twins" is not quoted on the Wisconsin Cheese Exchange the weekly prevailing price per pound of "Cheddars" shall be used; and

(iii) Divide by 7, add 30 percent thereof, and then multiply by 3.5.

(3) The price per hundredweight computed by the market administrator by adding together the plus amounts calculated pursuant to subdivisions (i) and (ii) of this subparagraph:

(i) From the arithmetic average of the daily wholesale prices per pound of 92-score butter on the Chicago market as reported by the U. S. D. A. during the calendar month within which the delivery period occurs, subtract 3 cents, add 20 percent thereof, and then multiply by 3.5; and

(ii) From the arithmetic average of the carlot prices per pound of nonfat dry milk solids for human consumption, spray and roller process, f. o. b. Chicago area manufacturing plants, as reported by the U. S. D. A. during the calendar month within which the delivery period occurs, deduct 5.5 cents, multiply the result by 8.2.

(b) *Class I milk prices.* The minimum prices per hundredweight to be paid by each handler for skim milk and butterfat in producer milk received at his fluid milk plant during the delivery period, which is classified as Class I milk, shall be determined by the market administrator as follows:

(1) To the basic formula price add the following amounts for the delivery periods indicated:

April, May, June	$0.85
July, August, February, March	1.00
All others	1.15

Provided, That the amount added pursuant to this subparagraph shall be $1.15 for each delivery period in 1949.

(2) Add together the amounts determined in paragraph (a) (3) (i) and (ii) of this section and divide the sum into the amount determined in subdivision (i) of such subparagraph.

(3) Multiply the price determined in subparagraph (1) of this paragraph by the percent determined in subparagraph (2) of this paragraph and then divide by 0.035. The resulting amount shall be the Class I butterfat price per hundredweight.

(4) From the price determined in subparagraph (1) of this paragraph subtract the amount computed in subparagraph (3) of this paragraph times 0.035, and divide the remainder by 0.965. The resulting amount shall be the Class I skim milk price per hundredweight.

(c) *Class II milk prices.* The minimum prices per hundredweight to be paid by each handler for skim milk and butterfat in producer milk received at his fluid milk plant during the delivery period, which is classified as Class II milk, shall be determined by the market administrator as follows:

(1) Compute an arithmetic average of the basic (or field) prices per hundredweight (computed to the nearest tenth of a cent) reported to have been paid, or to be paid, for milk of 3.5 percent butterfat content received from farmers during the calendar month in which the delivery period occurs at the following plants or places for which prices have been reported to the market administrator by the U. S. D. A. or by the companies listed below:

Company and Location

Defiance Milk Products Co., Defiance, Ohio.
Pet Milk Co., Coldwater, Ohio.
Nestles Milk Products Co., (uninspected milk price), Marysville, Ohio.
Fisher Dairy and Cheese Co., Wapakoneta, Ohio.
Swift and Co., Lima, Ohio.

(2) Multiply the price computed in subparagraph (1) of this paragraph by the percentage computed in paragraph (b) (2) of this section, and then divide by .035. The resulting amount shall be the Class II butterfat price per hundredweight.

(3) Subtract from the price computed in subparagraph (1) of this paragraph the amount computed in subparagraph (2) of this paragraph times 0.035 and divide the remainder by 0.965. The resulting amount shall be the Class II skim milk price per hundredweight.

SEC. 6. *Determination of uniform price to producers.*—(a) *Value of producer milk.* Except as provided in section 11 (a) the value of producer milk received by each handler during the delivery period shall be the sum of money computed by the market administrator by multiplying the hundredweight of skim milk and butterfat in each class by the applicable class prices and adding together the resulting amounts, and adding or subtracting, as the case may be, the amount necessary to correct errors in classification for previous delivery periods as disclosed by audit of the market administrator: *Provided,* That if a handler after the subtraction of other source milk and receipts from other handlers, has disposed of skim milk or butterfat, which on the basis of

his reports for the delivery period, pursuant to section 3 (a), has been credited to his producers as having been received from them, there shall be added to the value of his producer milk a further amount computed by multiplying the pounds in each class as subtracted pursuant to paragraph (f) (1) (iv) and (2) of section 4 by the applicable class price.

(b) *Computation of uniform price.* For each delivery period the market administrator shall compute a uniform price per hundredweight for producer milk by:

(1) Combining into one total the values computed pursuant to paragraph (a) of this section for all handlers who reported pursuant to section 3 (a) for such delivery period, except those in default in payments required pursuant to section 7 (d) for the preceding delivery period;

(2) Adding an amount representing the monies received in payment of obligations arising for the delivery period under section 11 (a);

(3) Subtracting, if the weighted average butterfat test of all producer milk represented by the amounts included under subparagraph (1) of this paragraph is greater than 3.5 percent or adding, if the weighted average butterfat test of such milk is less than 3.5 percent, an amount computed by multiplying the total pounds of butterfat represented by the difference of such weighted average butterfat test from 3.5 percent, by the butterfat differential computed pursuant to section 7 (f) multiplied by 10;

(4) Adding or subtracting, as the case may be, the amount necessary to correct errors in classification for previous delivery periods as disclosed by audit of the market administrator;

(5) Adding an amount representing not less than one-half of the unobligated balance in the producer-settlement fund;

(6) Dividing the result by the total hundredweight of producer milk represented by the amounts computed pursuant to paragraph (a) of this section; and

(7) Subtracting not less than 4 cents nor more than 5 cents.

(c) *Notification.* On or before the 12th day after the end of each delivery period, the market administrator shall mail to each handler, at his last known address, a statement showing for the delivery period:

(1) The amount and value of his producer milk in each class;

(2) The uniform price computed pursuant to paragraph (b) of this section, and the butterfat differential computed pursuant to section 7 (f);

(3) The amount to be paid by such handler to the producer-settlement fund pursuant to sections 7 (d) or 11 (a), or the amount due such handler from the producer-settlement fund, pursuant to section 7 (e); and

(4) The amounts to be paid by such handler pursuant to sections 8 and 9.

SEC. 7. *Payment for milk*—(a) *Time and method of final payment.* On or before the 18th day after the end of each delivery period, each handler shall pay to each producer or to a cooperative association, with respect to milk which was caused to be delivered to him by such association either directly or from producers who have authorized such association to collect payment for them, for milk received from each producer or from a cooperative association, respectively, during such delivery period at not less than the uniform price adjusted by the butterfat differential pursuant to paragraph (f) of this section, less the amount of payment made pursuant to paragraph (b) of this section.

(b) *Partial payment.* On or before the last day of each delivery period, each handler shall pay to each producer, or to a cooperative association authorized to receive payment, at not less than the uniform price for such handler for the preceding delivery period, for milk received from such producer or cooperative association by such handler during the first 15 days of the delivery period: *Provided,* That such price for the first delivery period shall be the average price adjusted to 3.5 percent butterfat content paid to producers by handlers in the Toledo, Ohio, marketing area during the preceding delivery period as reported by the Toledo market administrator: *And provided further,* That in the event any producer discontinues shipping to such handler during the delivery period, such partial payments shall not be made and full payment for all milk received from such producer during the delivery period shall be made on the 18th day after the end of the delivery period pursuant to paragraph (a) of this section.

(c) *Producer-settlement fund.* The market administrator shall establish and maintain a separate fund known as the "producer-settlement fund" into which he shall deposit all payments made by handlers pursuant to paragraph (d) of this section and out of which he shall make all payments to handlers pursuant to paragraph (e) of this section.

(d) *Payments to the producer-settlement fund.* On or before the 14th day after the end of each delivery period each handler shall make full payment to the market administrator of any pool debit balance shown on the account rendered pursuant to section 6 (c) for such delivery period.

(e) *Payments out of the producer-settlement fund.* On or before the 16th day after the end of each delivery period, the market administrator shall pay to each handler any pool credit balance shown on the account rendered pursuant to section 6 (c) for such delivery period, less any unpaid obligations of the handler: *Provided,* That if the balance in the producer-settlement fund is insufficient to make all payments to such handlers pursuant to this paragraph, the market administrator shall reduce uniformly such payments and shall complete such payments as soon as the necessary funds become available.

(f) *Producer butterfat differential.* In making payments pursuant to paragraph (a) of this section the uniform price shall be adjusted for each one-tenth of one percent of butterfat content in the milk of each producer above or below 3.5 percent, as the case may be, by a butterfat differential (computed to the nearest tenth of a cent) computed as follows: Divide the total value of all butterfat, computed pursuant to section 6 (a) by the total pounds of butterfat used in such computation and divide the result by 10.

SEC. 8. *Expense of administration.* As his pro rata share of expense incurred pursuant to section 2 (c) (4), each handler shall pay the market administrator, on or before the 14th day after the end of each delivery period, 3 cents per hundredweight, or such lesser amount as the Secretary may from time to time prescribe, with respect to receipts, during such delivery period, of (1) producer milk (including any milk of such handler's own production), and (2) other source milk at a fluid milk plant and classified as Class I milk: *Provided,* That a handler who receives only other source milk shall make such payments with respect to all milk disposed of as Class I milk within the marketing area.

SEC. 9. *Marketing services*—(a) *Deductions for marketing services.* Except as set forth in paragraph (b) of this section, each handler, in making payments to producers pursuant to section 7 (a), with respect to all milk received from each producer (except milk of such handler's own production) at a plant not operated by a cooperative association of which such producer is a member, shall deduct 4 cents per hundredweight of milk, or such lesser amount as the Secretary may from time to time prescribe, and on or before the 14th day after the end of such delivery period, shall pay such deductions to the market administrator. Such moneys shall be expended by the market administrator to verify weights, samples and tests of milk of such producers and to provide such producers with market information, such services to be performed by the market administrator, or by an agent engaged by and responsible to him.

(b) *Cooperative association.* In the case of producers whose milk is received at a plant not operated by a cooperative association of which such producers are members, and for whom a cooperative association is actually performing the services described in paragraph (a) of this section, as determined by the market administrator, each handler shall make, in lieu of the deductions specified in paragraph (a) of this section, such deductions from payments required pursuant to section 7 (a) as may be authorized by the membership agreement or contract between such cooperative association and such producers, and pay such deductions on or before the 14th day after the end of such delivery period to the cooperative association rendering such services of which such producers are members.

SEC. 10. *Errors in payments.* Whenever audit by the market administrator of any handler's reports, books, records, or accounts discloses errors resulting in moneys due (1) the market administrator from such handler, or such handler from the market administrator pursuant to sections 7, 8, 9, or 11 (a) or (2) any producer or cooperative association from such handler pursuant to section 7, the market administrator shall promptly notify such handler of any such amount due; and payment thereof shall be made on or before the next date for making

payment set forth in the provision under which such error occurred, following the 5th day after such notice.

SEC. 11. *Application of provisions*—(a) *Exempt milk.* Milk received by a handler the handling of which is subject to the pricing and payment provisions of any other Federal milk market order issued pursuant to the act shall not be subject to the pricing and payment provisions hereof, except that for any delivery period for which the Class I milk price determined pursuant to section 5 (b) (1) exceeds the corresponding minimum Class I milk price (adjusted by any applicable location differential) provided by such other order, the handler shall pay into the producer-settlement fund, with respect to all skim milk and butterfat disposed of in the marketing area during the delivery period as Class I milk, an amount computed as follows: From the total value of such skim milk and butterfat at the prices determined pursuant to sections 5 (b) (5) and (6) subtract the total value of such skim milk and butterfat at prices computed by applying the procedures prescribed in subparagraphs (2) to (6) of section 5 (b), inclusive, to the Class I price provided by such other order.

(b) *Milk caused to be delivered by cooperative associations.* Milk referred to herein as received from producers by a handler shall include milk of producers caused to be delivered directly from the farm to the fluid milk plant of such handler by a cooperative association which is authorized to collect payment for such milk.

(c) *Diverted milk.* (1) Producer milk diverted by an operator of a fluid milk plant from such plant to a plant not a fluid milk plant shall be deemed to have been received by the fluid milk plant from which such milk was diverted.

(2) Producer milk diverted by a cooperative association from a fluid milk plant to a plant not a fluid milk plant shall be deemed to have been received by such association.

(d) *Producer-handlers.* Sections 4, 5, 6, 7, 8, 9 and 10 shall not apply to the milk of a producer-handler.

SEC 12. *Effective time.* The provisions hereof, or of any amendment hereto, shall become effective at such time as the Secretary may declare and shall continue in force until suspended or terminated.

SEC. 13. *Termination of obligation.* (a) The obligation of any handler to pay money required to be paid under the terms of this order shall, except as provided in paragraphs (b) and (c) of this section, terminate two years after the last day of the calendar month during which the market administrator receives the handler's report of utilization of the milk involved in such obligation, unless within such two-year period the market administrator notifies the handler in writing that such money is due and payable. Service of such notice shall be complete upon mailing to the handler's last known address, and it shall contain but need not be limited to, the following information:

(1) The amount of the obligation;

(2) The month(s) during which the milk, with respect to which the obligation exists, was received or handled; and

(3) If the obligation is payable to one or more producers or to a cooperative association, the name of such producers or association, or if the obligation is payable to the market administrator, the account for which it is to be paid.

(b) If a handler fails or refuses, with respect to any obligation under this order, to make available to the market administrator or his representatives all books or records required by this order to be made available, the market administrator may, within the two-year period provided for in paragraph (a) of this section, notify the handler in writing of such failure or refusal. If the market administrator so notifies a handler, the said two-year period with respect to such obligation shall not begin to run until the first day of the calendar month following the month during which such books and records pertaining to such obligation are made available to the market administrator or his representatives.

(c) Notwithstanding the provisions of paragraphs (a) and (b) of this section, a handler's obligation under this order to pay money shall not be terminated with respect to any transaction involving fraud or wilful concealment of a fact, material to the obligation, on the part of the handler against whom the obligation is sought to be imposed.

(d) Any obligation on the part of the market administrator to pay a handler any money which such handler claims to be due him under the terms of this order shall terminate two years after the end of the calendar month during which the milk involved in the claim was received if an underpayment is claimed, or two years after the end of the calendar month during which the payment (including deduction or set-off by the market administrator) was made by the handler if a refund on such payment is claimed, unless such handler, within the applicable period of time, files, pursuant to section 8c (15) (A) of the act, a petition claiming such money.

SEC. 14. *Suspension or termination*—(a) *When suspended or terminated.* Whenever the Secretary finds this order or any provision thereof obstructs or does not tend to effectuate the declared policy of the act, he shall terminate or suspend the operation of this order or any such provision thereof.

(b) *Continuing obligations.* If, upon the suspension or termination of any or all provisions of this order there are any obligations thereunder the final accrual or ascertainment of which requires further acts by any person (including the market administrator), such further acts shall be performed notwithstanding such suspension or termination.

(c) *Liquidation.* Upon the suspension of the provisions hereof, except this section, the market administrator, or such other liquidating agent as the Secretary may designate, shall, if so directed by the Secretary, liquidate the business of the market administrator's office, dispose of all property in his possession or control, including accounts receivable, and execute and deliver all assignments or other instruments necessary or appropriate to effectuate any such disposition. If a liquidating agent is so designated all assets, books, and records of the market administrator shall be transferred promptly to such liquidating agent. If, upon such liquidation, the funds on hand exceed the amounts required to pay outstanding obligations of the office of the market administrator and to pay necessary expenses of liquidation and distribution, such excess shall be distributed to contributing handlers and producers in an equitable manner.

SEC. 15. *Agents.* The Secretary may, by designation in writing, name any officer or employee of the United States to act as his agent or representative in connection with any of the provisions hereof.

SEC. 16. *Separability of provisions.* If any provision hereof, or its application to any person or circumstances, is held invalid the application of such provisions, and of the remaining provisions hereof, to other persons or circumstances shall not be effected thereby.

Filed at Washington, D. C., this 20th day of April 1949.

[SEAL] JOHN I. THOMPSON,
Assistant Administrator.

[F. R. Doc. 49-3196; Filed, Apr. 22, 1949; 9:05 a. m.]

[7 CFR, Part 955]

[Docket AO 143-A1]

HANDLING OF GRAPEFRUIT GROWN IN ARIZONA; IN IMPERIAL COUNTY, CALIF.; AND IN THAT PART OF RIVERSIDE COUNTY, CALIF., SITUATED SOUTH AND EAST OF THE SAN GORGONIO PASS

DECISION WITH RESPECT TO PROPOSED AMENDMENTS TO MARKETING AGREEMENT AND ORDER

Pursuant to the rules of practice and procedure, as amended, governing proceedings to formulate marketing agreements and marketing orders (7 CFR and Supps. Part 900; 13 F. R. 8585), a public hearing was held at Phoenix, Arizona, beginning on December 13, 1948, and at Coachella, California, beginning on December 15, 1948, pursuant to notice thereof published in the FEDERAL REGISTER (13 F. R. 6922), upon proposed amendments to Marketing Agreement No. 96, hereinafter referred to as the "marketing agreement," and to Order No. 55 (7 CFR, Cum. Supp., Part 955), hereinafter referred to as the "order," regulating the handling of grapefruit grown in the State of Arizona; in Imperial County, California; and in that part of Riverside County, California, situated south and east of the San Gorgonio Pass, effective pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U. S. C. 601 et seq.).

Upon the basis of the evidence introduced at the hearing and record thereof, the Acting Assistant Administrator, Production and Marketing Administration, on March 1, 1949, filed with the Hearing Clerk, United States Department of Agri-

culture, his recommended decision in this proceeding. The notice of the filing of such recommended decision, affording opportunity to file written exceptions thereto, was published in the FEDERAL REGISTER (F. R. Doc. 49-1683; 14 F. R. 1009). No exception to the recommended decision has been filed.

The material issue, findings (including the general findings), and conclusions of the aforesaid recommended decision are hereby approved and adopted as the material issues, findings (including the general findings), and conclusions of this decision as if set forth in full herein.

Amendments to the marketing agreement and order. Annexed hereto and made a part hereof are two documents entitled, respectively, "Agreement Amending the Marketing Agreement Regulating the Handling of Grapefruit Grown in the State of Arizona; in Imperial County, California; and in that Part of Riverside County, California, Situated South and East of the San Gorgonio Pass"; and "Order Amending the Order Regulating the Handling of Grapefruit Grown in the State of Arizona; in Imperial County, California; and in that Part of Riverside County, California, Situated South and East of the San Gorgonio Pass" which have been decided upon as the appropriate and detailed means of effectuating the foregoing conclusions. The aforesaid agreement and amendatory order shall not become effective unless and until the requirements of § 900.14 of the aforesaid rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

It is hereby ordered, That all of this decision, except the attached agreement, be published in the FEDERAL REGISTER. The regulatory provisions of said agreement are identical with those contained in the attached amendatory order which will be published with this decision.

This decision filed at Washington, D. C., this 19th day of April 1949.

[SEAL] CHARLES F. BRANNAN,
Secretary of Agriculture.

Order[1] Amending the Order Regulating the Handling of Grapefruit Grown in the State of Arizona; in Imperial County, California; and in That Part of Riverside County, California Situated South and East of the San Gorgonio Pass

§ 955.0 *Findings and determinations.* The findings and determinations hereinafter set forth are supplementary to and in addition to the findings and determinations made in connection with the issuance of this order; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) *Findings upon the basis of the hearing record.* Pursuant to the Agricultural Marketing Agreement Act of 1937, as amended (48 Stat. 31, as amended; 7 U. S. C. and Sup. I 601 et seq.), hereinafter referred to as the "act," and the rules of practice and procedure, as amended, governing proceedings to formulate marketing agreements and marketing orders (7 CFR and Supps. Part 900; 13 F. R. 8585), a public hearing was held at Phoenix, Arizona, beginning on December 13, 1948, and at Coachella, California, beginning on December 15, 1948, upon proposed amendments to the marketing agreement and to Order No. 55 (7 CFR Cum. Supp., Part 955), regulating the handling of grapefruit grown in the State of Arizona; in Imperial County, California; and in that part of Riverside County, California, situated south and east of the San Gorgonio Pass. Upon the basis of the evidence introduced at such hearing, and the record thereof, it is found that:

(1) The said order as hereby amended and all of the terms and conditions thereof will tend to effectuate the declared policy of the act;

(2) The said order as hereby amended regulates the handling of grapefruit grown in the State of Arizona; in Imperial County, California; or in that part of Riverside County, California, situated south and east of the San Gorgonio Pass, in the same manner as the aforementioned marketing agreement as amended, and the said order as hereby amended is applicable only to persons in the respective classes of industrial and commercial activity specified in a marketing agreement upon which hearings have been held;

(3) The said order as hereby amended prescribes, so far as practicable, such different terms, applicable to different production areas, as are necessary to give due recognition to the difference in production and marketing of grapefruit grown in the State of Arizona; in Imperial County, California; or in that part of Riverside County, California, situated south and east of the San Gorgonio Pass; and

(4) The said order as hereby amended is limited in its application to the smallest regional production area that is practicable, consistent with carrying out the declared policy of the act, and the issuance of several orders applicable to any subdivision of such regional production areas would not effectively carry out the declared policy of the act.

It is therefore ordered, That, on and after the effective date hereof, the handling of grapefruit grown in the State of Arizona; in Imperial County, California; or in that part of Riverside County, California, situated south and east of the San Gorgonio Pass, shall be in conformity to, and in compliance with, the terms and conditions of the aforesaid order as hereby amended; and such order is hereby amended as follows:

1. Delete paragraph (b) of § 955.1 and substitute therefor the following:

(b) "Act" means the Agricultural Marketing Agreement Act of 1937, as amended and further amended by Public Law 305, 80th Cong., approved August 1, 1947 (48 Stat. 31, as amended; 7 U. S. C. and Sup. I 601, et seq.).

2. Add to § 955.1 the following new paragraph:

(k) "Variety" or "varieties" means either or both of the following classifications or groupings of fruit: (1) White seeded grapefruit, and white seedless grapefruit, and (2) pink seeded grapefruit, and pink seedless grapefruit.

3. Delete § 955.4 and substitute therefor the following:

§ 955.4 *Regulations* — (a) *Marketing policy.* Before submitting any recommendation to the Secretary for the regulation of the shipment of any variety of fruit during any fiscal period, the Administrative Committee shall prepare a report setting forth a marketing policy with respect to the shipment of the varieties of fruit which the committee deems advisable for the current shipping season. Additional reports shall be submitted, from time to time, in the event that it is deemed advisable to adopt new marketing policies in view of changed demand and supply conditions with respect to any variety of fruit. The Administrative Committee shall publicly announce the issuance of any such report and copies thereof shall be made available for inspection by any producer or handler at the office of the Administrative Committee.

(b) *Recommendation for grade and size regulation.* (1) It shall be the duty of the Administrative Committee to investigate the supply and demand conditions for grades and sizes of the varieties of fruit. Whenever the committee finds that such conditions make it advisable to regulate the shipment of particular grades or sizes of any variety of fruit during any period, it shall recommend the particular grades or sizes thereof deemed advisable by it to be shipped during such period; and any such recommendation may include a proposal that shipments of such variety to Canada shall be limited to sizes different from the proposed size limitation applicable to shipments of the same variety in interstate commerce. Thereafter, the committee shall promptly report such findings and recommendation, together with supporting information, to the Secretary.

(2) In determining the grades and sizes of any variety of fruit deemed advisable to be regulated in view of the prospective demand therefor, the committee shall give due consideration to the following factors: (i) Market prices, including market prices by grades and sizes of each variety of fruit; (ii) the fruit of each variety on hand in market areas, as evidenced by supplies en route and on track at the principal markets; (iii) available supply, maturity, and condition of each variety of fruit in the producing area, including the grade and size composition of each variety of fruit remaining in the producing area; (iv) supplies from competitive areas producing citrus fruits and other competitive fruits; and (v) trend in consumer income.

(c) *Recommendation for regulation by minimum standards of quality and maturity.* Whenever the Administrative

[1] This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

Committee deems it advisable to regulate during any period the shipment of fruit by establishing minimum standards of quality and maturity, it shall so recommend to the Secretary. With each such recommendation the committee shall submit to the Secretary the information and data on which such recommendation is predicated; and the committee shall also submit to the Secretary such other information as he may request.

(d) *Issuance of regulation.* (1) Whenever the Secretary shall find, from the recommendation and information submitted by the Administrative Committee or from other available information, that to limit the shipment of any variety or varieties of fruit to particular grades and sizes thereof would tend to effectuate the declared policy of the act, he shall so limit the shipments of such variety or varieties during a specified period; and any such regulation may provide that shipments of such variety or varieties to Canada shall be limited to sizes different from the size limitation applicable to shipments of the same variety or varieties in interstate commerce. The Administrative Committee shall be informed immediately of any such regulation issued by the Secretary; and the said committee shall promptly give adequate notice thereof to handlers.

(2) Whenever the Secretary finds from the recommendation and information submitted by the committee, or from other available information, that to establish and maintain in effect minimum standards of quality or maturity, or both, for the shipment of fruit during any period would tend to effectuate the declared policy of the act and be in the public interest, he shall establish such standards, designate such period, and so limit the shipment of such fruit. The Secretary shall immediately notify the committee of the issuance of any such regulation; and the said committee shall promptly give adequate notice thereof to handlers.

(e) *Notice of meeting.* The Administrative Committee shall give public notice of at least forty-eight hours of any meeting to be held for the purpose of making any recommendation pursuant to this section.

(f) *Inspection and certification.* During any period in which the Secretary has regulated the shipment of any variety or varieties of fruit pursuant to this section, each handler shall, prior to making each shipment of such variety or varieties, cause such shipment to be inspected by an authorized representative of the Federal-State Inspection Service. Promptly thereafter, such handler shall submit to the Administrative Committee a copy of the inspection certificate issued thereon: *Provided,* That this provision shall not be applicable to a handler who ships any variety of fruit which has been so inspected and a copy of such inspection certificate has been submitted to the Administrative Committee.

4. Delete § 955.5 and substitute therefor the following:

§ 955.5 *Reports*—(a) *Shipping manifest report.* The Administrative Committee may require information from each handler regarding the grade, size, and variety of each standard box contained in each individual shipment made by such handler, and may require such information to be delivered to the said committee within twenty-four hours after such shipment is made, in such manner as the said committee may prescribe and upon forms prepared by it.

(b) *Disposition report.* The Administrative Committee may, from time to time, require each handler to furnish the following information with respect to fruit: (1) Quantity of each variety shipped in interstate commerce and to Canada; (2) quantity of each variety shipped by express and parcel post; (3) quantity of each variety shipped for distribution to persons on relief, including donations for charitable purposes; (4) quantity of each variety sold for consumption in fresh form within the State of origin; (5) quantity of each variety exported to countries other than Canada; (6) quantity of each variety sold or otherwise disposed of for canning or for manufacturing into by-products; and (7) quantity of each variety disposed of otherwise.

(c) *Other reports.* Upon request of the Administrative Committee, made with the approval of the Secretary, every handler shall furnish to such committee, in such manner and at such times as it prescribes, such other information as will enable it to perform its duties and to exercise its powers hereunder.

5. Delete § 955.7 and substitute therefor the following:

§ 955.7 *Compliance.* Except as provided herein, no handler shall ship any variety of fruit, the shipment of which has been prohibited by the Secretary in accordance with the provisions hereof; and no handler shall ship any variety of fruit except in conformity with the provisions hereof.

[F. R. Doc. 49-3165; Filed, Apr. 22, 1949; 8:58 a. m.]

[7 CFR, Part 955]

HANDLING OF GRAPEFRUIT GROWN IN ARIZONA; IN IMPERIAL COUNTY, CALIF.; AND IN THAT PART OF RIVERSIDE COUNTY, CALIF., SITUATED SOUTH AND EAST OF SAN GORGONIO PASS

ORDER DIRECTING THAT REFERENDUM BE CONDUCTED; DESIGNATION OF AGENT TO CONDUCT REFERENDUM; DETERMINATION OF REPRESENTATIVE PERIOD

Pursuant to the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U. S. C. 601 et seq.; 61 Stat. 208, 707), it is hereby directed that a referendum be conducted among the producers who, during the period August 1, 1947, to July 31, 1948, both dates inclusive (which period is hereby determined to be a representative period for the purpose of such referendum), were engaged in the State of Arizona; in Imperial County, California; or in that part of Riverside County, California, situated south and east of the San Gorgonio Pass in the production of grapefruit for market, to determine whether such producers favor the issuance of an order amending Order No. 55 (7 CFR, Cum. Supp., 955.1 et seq.), regulating the handling of grapefruit grown in the State of Arizona; in Imperial County, California; and in that part of Riverside County, California, situated south and east of the San Gorgonio Pass, which is attached to the decision of the Secretary of Agriculture filed simultaneously herewith; and M. T. Coogan, Field Representative, Fruit and Vegetable Branch, Production and Marketing Administration, United States Department of Agriculture, 1206 Santee Street, 12th Floor, Los Angeles 15, California, is hereby designated agent of the Secretary of Agriculture to perform the following functions:

(1) Conduct said referendum in accordance with the rules and limitations herein set forth, giving an opportunity to each producer of grapefruit grown in the State of Arizona; in Imperial County, California; or in that part of Riverside County, California, situated south and east of the San Gorgonio Pass to cast his ballot relative to the aforesaid proposed amendment on forms furnished by the designated agent of the Secretary of Agriculture. A cooperative association of such producers, bona fide engaged in marketing such grapefruit may vote for the producers who are members of, stockholders in, or under contract with, such cooperative association, and the vote of such cooperative association shall be considered as the vote of all such producers.

(2) Determine the time of commencement, duration, and termination of the period of the referendum: *Provided,* That the referendum shall be completed prior to June 30, 1949.

(3) Determine the necessary number of polling places and designate and announce such polling places, the area to be served by each such polling place, and the hours during which such polling places will be open: *Provided,* That all of such polling places shall remain open not less than four (4) consecutive daylight hours during each day announced.

(4) In addition to the designation and announcement of polling places, if the said agent determines it advisable, arrange for balloting by mail, in which event the said agent shall designate the place or places to which such ballots shall be mailed and shall give notice of the last date on which such ballots must be placed in the mail.

(5) Give public notice of the time and place of balloting (a) by posting a notice thereof at least three (3) days in advance of the first voting day at each polling place, (b) by issuing a press release in newspapers having general circulation in the grapefruit producing districts of the State of Arizona; Imperial County, California; and that part of Riverside County, California, situated south and east of the San Gorgonio Pass, and (c) by such other means as the said agent may deem advisable.

(6) Appoint any of the County Agricultural Agents, or any member of the State Production and Marketing Administration Committees, or any member of County Agricultural Conservation Association Committees in the States of California and Arizona, or any other per-

sons deemed necessary or desirable, to assist the said agent in carrying out his duties hereunder: *Provided*, That such persons so appointed shall serve without compensation and may be authorized, by the said agent, to perform the following functions in accordance with the rules set forth herein:

(a) Give public notice of the referendum in the manner specified herein.

(b) Preside as a poll officer at a designated polling place.

(c) Distribute ballots to producers and receive such ballots after they are cast.

(d) Secure the name and address of each person casting a ballot and inquire into the eligibility of each such person to vote.

(e) Forward to M. T. Coogan, 1206 Santee Street, 12th Floor, Los Angeles 15, California, immediately after the close of the referendum the following: (i) The name and address of each producer who cast a ballot at the polling place designated for such poll officer and whose ballot was received by such officer; (ii) all of such ballots which were received by the officer, together with his certificate that the ballots forwarded are all of the ballots cast and received during the referendum period at the designated polling place; (iii) a statement showing the time and place the notice of referendum was posted and, if the notice was mailed to producers, the mailing list showing the names and addresses to which the notice was mailed and the time of such mailing; and (iv) a detailed statement explaining the method used in giving publicity to such referendum.

(7) Upon receipt by the designated agent of all ballots cast and such other documents as are required pursuant hereto, the ballots shall be canvassed by him and the results of the referendum shall be forwarded with the ballots and other required documents to the Fruit and Vegetable Branch, Production and Marketing Administration, United States Department of Agriculture, Washington 25, D. C.

The Fruit and Vegetable Branch shall prepare and submit to the Secretary a detailed report covering the results of the referendum, the manner in which the referendum was conducted, the extent and kind of public notice given, and all other information pertinent to the full analysis of the referendum and its results.

The designated agent and any appointee pursuant hereto shall not refuse to accept a ballot submitted or cast; but should they, or any of them, deem that a ballot should be challenged for any reason, or if such ballot shall be challenged by any other person, said agent or appointee shall endorse, above his signature, on the back of said ballot a statement to the effect that such ballot was challenged, by whom challenged, and the reasons therefor; and the number of such challenged ballots shall be stated when they are forwarded as provided herein.

All ballots shall be treated as confidential and the contents thereof shall not be divulged except to (1) the Secretary of Agriculture, (2) his agent designated herein to conduct such referendum, (3) members of the Production and Marketing Administration, United States Department of Agriculture, (4) members of the Office of the Solicitor, United States Department of Agriculture, and (5) such other persons as the Secretary may hereafter designate.

The Director of the Fruit and Vegetable Branch, Production and Marketing Administration, United States Department of Agriculture, is hereby authorized to prescribe additional instructions, not inconsistent with the rules and the limitations herein set forth, to govern the procedure to be followed by the said agent and appointees in conducting said referendum.

Done at Washington, D. C., this 19th day of April 1949.

[SEAL] CHARLES F. BRANNAN,
Secretary of Agriculture.

[F. R. Doc. 49-3164; Filed, Apr. 22, 1949; 8:58 a. m.]

[7 CFR, Part 965]

HANDLING OF MILK IN CINCINNATI, OHIO, MARKETING AREA

DECISION WITH RESPECT TO PROPOSED MARKETING AGREEMENT AND PROPOSED AMENDMENT TO ORDER, AS AMENDED

Pursuant to Public Act No. 10, 73d Congress (May 12, 1933), as amended, and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (hereinafter referred to as the "act"), and the rules of practice and procedure, as amended, governing proceedings to formulate marketing agreements and orders (7 CFR, Supps., 900.1 et seq.), a public hearing was held at Cincinnati, Ohio, on February 10 and 11, 1949, after the issuance of a notice on February 1, 1949 (14 F. R. 487).

Upon the basis of the evidence introduced at the hearing and the record thereof, the Assistant Administrator, Production and Marketing Administration, on March 21, 1949, filed with the Hearing Clerk, United States Department of Agriculture, his recommended decision in this proceeding. The notice of filing of such recommended decision and opportunity to file written exceptions thereto was published in the FEDERAL REGISTER (14 F. R. 1327).

Exceptions were filed on behalf of the Cincinnati Sales Association, Inc., The Cooperative Pure Milk Association, and the Matthews Frechtling Dairy Co. These exceptions have been considered, and in view thereof the findings and conclusions of the recommended decision have been carefully examined in connection with the evidence contained in the hearing record. The findings and conclusions of the recommended decision with respect to the proposal to modify the pricing of milk made into specified manufactured products under certain conditions should be revised to include milk made into Cheddar cheese as well as butter. The revised findings and conclusions with respect to this issue are hereinafter set forth. As to all other issues considered at the hearing, the exceptions indicate that interested parties should be given a further opportunity to adduce additional evidence in connection therewith. Hence, no findings and conclusions in connection with these issues are contained in this decision. Since the hearing is to be reopened with respect to these issues, opportunity should be afforded interested parties to submit additional or supplemental proposals for the amendment of the order. The issuance of the notice for the re-opened hearing will be deferred for a period of 20 days from the date of the publication of this decision in the FEDERAL REGISTER to give interested parties sufficient time to file proposals for inclusion in the notice of the reopened hearing.

Certain of the issues covered by the hearing on February 10 and 11, 1949, were considered in light of contentions that an emergency condition prevailed in the market. It was argued in the exceptions that emergency procedure should have been employed in the issuance of a decision on such issues. Although a hearing notice may be issued on the basis of minimum notice requirements and include provision for receiving evidence with respect to both economic and emergency conditions which relate to the proposals to be heard, the determination to use emergency procedure in taking action on the subsequent conclusions reached must be based upon the evidence adduced at the hearing. It is not to be inferred from the statement in the hearing notice concerning the taking of evidence on the emergency character of the proposals that the fact of an emergency has been established. Support for a claim of an emergency therefore must rest in the evidence in a manner similar to the support for any proposed provision to be included in an order. It is determined on the basis of the evidence presented at the hearing of February 10 and 11, 1949, that existing conditions would not have justified the waiving of a recommended decision and opportunity to file exceptions thereto.

To the extent that the rulings, findings and conclusions of this decision are at variance with the exceptions filed in this proceeding, such exceptions are overruled.

Findings and conclusions. The following findings and conclusions on the material issue decided in this decision are based upon the evidence in the record of the hearing:

The pricing of milk made into butter and Cheddar cheese should be modified under certain conditions.

Handlers proposed that a lower price should be applied to producer milk made into butter and Cheddar cheese whenever the seasonal surplus of producer milk becomes burdensome. It was suggested by the proponents that a burden of surplus occurs when the total deliveries of producer milk exceed 130 percent of total Class I and Class II usage for the market. When the above supply condition prevails, producer milk made into butter and Cheddar cheese would be priced by the following formula: Subtract 4 cents from the price of 92 score butter at Chicago, multiply by 4.8, and add an amount computed by substracting 8.6 cents from the average price of spray and roller process nonfat dry milk solids and then multi-

plying by 8.5. A producers' organization suggested that such proposed formula price be applied only when producer milk receipts exceed 140 percent of Class I and Class II milk and handlers indicated agreement with such a change in percentage. A similar price level for milk used as butter was made a part of the order for the months of June and July 1945.

In support of their proposal, it was indicated that many handlers having surplus milk have no other outlets than the manufacture of butter by the handler or the sale of milk or cream to a butter or Cheddar cheese manufacturing plant. They pointed also to increased producer receipts as compared with a year ago and to a less attractive market for nonfat dry milk solids. It was alleged that the provision proposed is necessary to prevent extreme losses to many handlers attempting to market surplus milk.

The Cincinnati market experiences substantial seasonal fluctuations in production in relation to Class I and Class II milk sales. In 1948, the percentage of producer milk in Class III varied from 6.2 percent of total producer receipts in November to 43.5 percent in May. The record also contains production volume figures from 1943 to 1948. Such data indicate that production volume in the flush production months of recent years reached its highest level in the summer months of 1948. Handlers who have no outlet for butterfat except to dispose of it in butter or Cheddar cheese manufacture may experience disadvantage as compared with those handlers who are in a position to dispose of butterfat in other manufactured uses such as ice cream or to store butterfat in the form of cream for later disposition. It is concluded that a provision reducing the price on milk made into butter or Cheddar cheese as proposed when producer receipts for the market exceed 140 percent of the Class I and Class II uses of producer milk will assist orderly marketing. However, since the provision is adopted as a means of alleviating the problem of disposing of excess butterfat currently, it is not intended that the lower price provided under the above conditions shall apply to butterfat stored in the form of cream and utilized as butter in a subsequent delivery period.

Marketing agreement and order. Annexed hereto and made a part hereof are two documents entitled, respectively, "Order Amending the Order, As Amended, Regulating the Handling of Milk in the Cincinnati, Ohio, Marketing Area," and "Marketing Agreement Regulating the Handling of Milk in the Cincinnati, Ohio, Marketing Area," which have been decided upon as the appropriate and detailed means of effecting the foregoing conclusions. These documents shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure covering proceedings to formulate marketing agreements and orders have been met.

Determination of representative period. The month of February, 1949, is hereby determined to be the representative period for the purpose of ascertaining whether the issuance of an order amending the order, as amended, regulating the handling of milk in the Cincinnati, Ohio, marketing area is approved or favored by producers who during such period were engaged in the production of milk for sale in the marketing area specified in such order, as amended.

It is hereby ordered, That all of this decision, except the attached marketing agreement, be published in the FEDERAL REGISTER. The regulatory provisions of said marketing agreement are identical with those contained in the attached order which will be published with the decision.

This decision filed at Washington, D. C., this 19th day of April 1949.

[SEAL] CHARLES F. BRANNAN,
Secretary of Agriculture.

Order,[1] *Amending the Order, as Amended, Regulating the Handling of Milk in the Cincinnati, Ohio, Marketing Area*

§ 965.0 *Findings and determinations.* The findings and determinations hereinafter set forth are supplementary to and in addition to the findings and determinations made in connection with the issuance of this order and of each of the previously issued amendments thereto; and all of said previous findings and determinations are hereby ratified and affirmed except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) *Findings upon the basis of the hearing record.* Pursuant to Public Act No. 10, 73d Congress (May 12, 1933), as amended, and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (hereinafter referred to as the "act"), and the rules of practice and procedure covering the formulation of marketing agreements and orders (7 CFR, Supps., 900.1 et seq.; 12 F. R. 1159, 4904), a public hearing was held upon certain proposed amendments to the tentatively approved marketing agreement and to the order, as amended, regulating the handling of milk in the Cincinnati, Ohio, milk marketing area. Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order, as amended, and as hereby further amended, and all of the terms and conditions of said order, as amended and as hereby further amended, will tend to effectuate the declared policy of the act;

(2) The prices calculated to give milk produced for sale in said marketing area a purchasing power equivalent to the purchasing power of such milk as determined pursuant to sections 2 and 8e of the act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for such milk, and the minimum prices specified in the order, as amended, and as hereby further amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The said order, as amended, and as hereby further amended, regulates the handling of milk in the same manner as and is applicable only to persons in the respective classes of industrial and commercial activity specified in a marketing agreement upon which hearings have been held.

Order relative to handling. It is therefore ordered, that on and after the effective date hereof, the handling of milk in the Cincinnati, Ohio, marketing area shall be in conformity to and in compliance with the terms and conditions of the aforesaid order, as amended, and as hereby further amended; and the aforesaid order, as amended, is hereby further amended as follows:

1. Replace the period (.) at the end of § 965.6 (a) (3) with a colon (:) and add the following proviso: *"Provided further,* That for any delivery period when the total receipts of milk from producers by all handlers exceed 140 percent of Class I and Class II milk, the price for milk made into Cheddar cheese and butter, except butter made from storage cream, during such delivery period shall be that resulting from the following computation by the market administrator: Subtract 4 cents from the average price per pound of 92-score butter (computed in the manner provided above in this subparagraph) for the delivery period during which such producer milk was received, multiply the result by 4.8; and add an amount computed by subtracting 8.6 cents from the average price of spray and roller process nonfat dry milk solids (computed in the manner provided above in this subparagraph), and multiplying the result by 8.5. The price computed pursuant to this proviso shall not be construed to be the Class III price as applied in any other section of this order."

[F. R. Doc. 49-3192; Filed, Apr. 22, 1949; 9:04 a. m.]

[7 CFR, Part 971]

HANDLING OF MILK IN DAYTON-SPRINGFIELD, OHIO, MARKETING AREA

DECISION WITH RESPECT TO PROPOSED MARKETING AGREEMENT AND PROPOSED AMENDMENT TO ORDER, AS AMENDED

Pursuant to Public Act No. 10, 73d Congress (May 12, 1933), as amended, and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (hereinafter referred to as the "act"), and the rules of practice and procedure, as amended, governing proceedings to formulate marketing agreements and orders (7 CFR, Supps., 900.1 et seq.), a public hearing was held at Dayton, Ohio, on January 17, 18, and 19, 1949, after the issuance of a notice on January 7, 1949 (14 F. R. 185).

Upon the basis of the evidence introduced at the hearing and the record thereof, the Assistant Administrator,

[1] This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

Production and Marketing Administration, on March 21, 1949, filed with the Hearing Clerk, United States Department of Agriculture, his recommended decision in this proceeding. The notice of filing of such recommended decision and opportunity to file written exceptions thereto was published in the FEDERAL REGISTER (14 F. R. 1330).

Exceptions were filed on behalf of the Miami Valley Cooperative Milk Producers Association, Inc., and by the Dayton and Springfield handlers. These exceptions have been considered and appropriate revisions made. To the extent to which the findings and conclusions of the recommended decision as hereinafter modified, are at variance with the exceptions, such exceptions are hereby overruled.

The material issues and the findings and conclusions of the recommended decision (F. R. Doc. 49–2204; 14 F. R. 1330) are hereby approved and adopted as the material issues and the findings and conclusions of this decision as if set forth in full herein subject to the following amendments:

1. Add immediately after the first paragraph beginning in column 3, 14 F. R. 1331 (F. R. Doc. 49–2204) the following paragraphs:

The pricing of Grade A milk requires also a revision of the definition of "producer" for the purpose of distinguishing a producer not meeting Dayton Grade A milk requirements from one who does comply with such requirements. The requirements of the Springfield market differ from the recently adopted Dayton requirements. Accordingly the definition of producer has been revised to make the necessary distinctions and to provide that at such time as plants involved with the Dayton Grade A requirements no longer distribute milk in the marketing area for consumption as fluid milk (in Class I milk) except under a Grade A label, a producer whose milk does not meet the Grade A standard but is received at such a plant shall be considered as a producer only for the purposes of the administrative assessment provisions (§ 971.9) of the order.

The Dayton health department stated its intention to degrade after July 1, 1949, milk not meeting Grade A bacterial standards and to limit its use by Dayton handlers to cottage cheese and manufactured milk products. It is concluded that dairy farmers producing such milk should not qualify as producers when delivery is made to a handler's plant from which no milk is distributed in the marketing area for consumption as fluid milk (in Class I milk) except under a Grade A label, since in such circumstances the degraded milk necessarily would not be eligible for fluid milk use. However, it is expected that Dayton handlers will continue to receive degraded milk in anticipation of its recertification as Grade A milk. If the degrading of such milk from the Grade A standard is temporary and the milk remains in the plant, the necessary accounting in connection with such milk will increase somewhat rather than decrease. It is concluded, therefore, that the administrative assessment applicable to producer milk should apply to any such degraded milk which is received in the handler's plant.

It is concluded further that the particular amendments set forth in the recommended decision as the detailed means for carrying the above conclusions into effect should be modified for simplification and clarification but without modification of their intended effect.

2. Delete the second paragraph beginning in column 1, 14 F. R. 1332 (F. R. Doc. 49–2204) in its entirety and substitute therefor the following:

In view of the increased supply of Class III milk expected in the spring and summer months of 1949 and the indicated unwillingness of dairy product manufacturers to buy additional milk in those months except at prices lower than those paid regular supply sources, it is concluded that the price of skim milk utilized in Class III milk should be determined for the months of April through August by subtracting 20 cents per hundredweight from the price of Class III skim milk as now provided in the order. The Class III skim milk price is based on the market price of nonfat dry milk solids at Chicago less an appropriate manufacturing allowance.

Use of the average price of nonfat dry milk solids at Chicago area manufacturing plants would result in a price for skim milk 16 to 17 cents per hundredweight lower than that resulting from use of the price quoted f. o. b. Chicago. Most Dayton-Springfield handlers have no manufacturing facilities for handling skim milk and have no outlet for skim milk during the flush production months which will yield a return equivalent to the price of nonfat dry milk solids delivered at Chicago. Considering these facts and transportation and other costs involved in disposing of surplus skim milk, a reduction of 20 cents per hundredweight is reasonable for the surplus months. The order now provides for a somewhat seasonally lower Class III skim milk price for the months of April through July. Records indicate, however, that August also is a heavy surplus month (in 1948, 29.75 percent of all skim milk was utilized in Class III in August) and therefor a Class III skim milk price 20 cents per hundredweight lower than currently provided is recommended for the months of April through August, inclusive.

Marketing agreement and order. Annexed hereto and made a part hereof are two documents entitled, respectively, "Order Amending the Order, As Amended, Regulating the Handling of Milk in the Dayton-Springfield, Ohio, Marketing Area," and "Marketing Agreement Regulating the Handling of Milk in the Dayton-Springfield, Ohio, Marketing Area," which have been decided upon as the appropriate and detailed means of effecting the foregoing conclusions. These documents shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure covering proceedings to formulate marketing agreements and orders have been met.

Determination of representative period. The month of February, 1949, is hereby determined to be the representative period for the purpose of ascertaining whether the issuance of an order amending the order, as amended, regulating the handling of milk in the Dayton-Springfield, Ohio, marketing area in the manner set forth in the attached amending order is approved or favored by producers who during such period were engaged in the production of milk for sale in the marketing area specified in such order, as amended.

It is hereby ordered, That all of this decision, except the attached marketing agreement, be published in the FEDERAL REGISTER. The regulatory provisions of said marketing agreement are identical with those contained in the attached order which will be published with the decision.

This decision filed at Washington, D. C., this 19th day of April 1949.

[SEAL] CHARLES F. BRANNAN,
Secretary of Agriculture.

Order,[1] *Amending the Order, as Amended, Regulating the Handling of Milk in the Dayton-Springfield, Ohio, Marketing Area*

§ 971.0 *Findings and determinations.* The findings and determinations hereinafter set forth are supplementary to and in addition to the findings and determinations made in connection with the issuance of this order and of each of the previously issued amendments thereto; and all of said previous findings and determinations are hereby ratified and affirmed except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) *Findings upon the basis of the hearing record.* Pursuant to Public Act No. 10, 73d Congress (May 12, 1933), as amended, and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (hereinafter referred to as the "act"), and the rules of practice and procedure covering the formulation of marketing agreements and orders (7 CFR, Supps., 900.1 et seq.), a public hearing was held upon certain proposed amendments to the tentatively approved marketing agreement and to the order, as amended, regulating the handling of milk in the Dayton-Springfield, Ohio, marketing area. Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order, as amended and as hereby further amended, and all of the terms and conditions of said order, as amended and as hereby further amended, will tend to effectuate the declared policy of the act;

(2) The prices calculated to give milk produced for sale in said marketing area a purchasing power equivalent to the purchasing power of such milk as determined pursuant to sections 2 and 8e of the act are not reasonable in view of the price

[1] This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for such milk, and the minimum prices specified in the order, as amended, and as hereby further amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The said order, as amended, and as hereby further amended, regulates the handling of milk in the same manner as and is applicable only to persons in the respective classes of industrial and commercial activity specified in a marketing agreement upon which hearings have been held.

Order relative to handling. It is therefore ordered, that on and after the effective date hereof, the handling of milk in the Dayton-Springfield, Ohio, marketing area shall be in conformity to and in compliance with the terms and conditions of the aforesaid order, as amended, and as hereby further amended; and the aforesaid order, as amended, is hereby further amended as follows:

1. Delete § 971.1 (e) and substitute therefor the following:

(e) "Producer" means any person who produces, under a dairy farm inspection permit or other equivalent certification issued by the appropriate health authority in the marketing area, milk which is (1) received at a plant from which Class I milk is disposed of in the marketing area, or (2) caused by a handler to be delivered to a plant from which Class I milk is not disposed of in the marketing area: *Provided,* That any such person who is not certified as a Grade A producer but who produces milk which is received at a handler's plant from which no milk is distributed in the marketing area for consumption as fluid milk (in Class I milk) except under a Grade A label, shall be considered a producer for the purpose of § 971.9 only.

"Grade A producer" means any producer so certified to the market administrator by an appropriate health authority in the marketing area if such certification has been in effect for not less than 16 days during the calendar month in which the delivery period occurs.

2. Delete § 971.4 (b) (3) (i) and substitute therefor the following:

(i) Used to produce, or disposed of as, ice cream, ice cream mix, frozen cream, condensed milk, condensed skim milk, cottage cheese, any other milk product not specified in Class I milk and Class II milk, or any commercially manufactured food product;

3. Delete § 971.5 (a) (3) and substitute therefor the following:

(3) The price computed by the market administrator by adding together the plus amounts calculated pursuant to subdivisions (i) and (ii) of this subparagraph:

(i) From the arithmetic average of the daily wholesale prices per pound of 92-score butter on the Chicago market as reported by the Department of Agriculture during the calendar month within which the delivery period occurs, subtract 3 cents, add 20 percent thereof, and then multiply by 3.5; and

(ii) From the arithmetic average of the carlot prices per pound of nonfat dry milk solids for human consumption, roller process, delivered at Chicago, as reported by the Department of Agriculture during the calendar month within which the delivery period occurs, deduct 5.5 cents, multiply the result by 8.2.

4. Delete § 971.5 (d) (1) and substitute therefor the following:

(1) The price per hundredweight of such skim milk shall be computed by dividing the amount computed pursuant to § 971.5 (a) (3) (ii) by, .965, and (i) for the months of April, May, June, and July, subtracting 20 cents, (ii) for all other months except August, adding 20 cents.

5. Delete § 971.5 (e) and substitute therefor the following:

(e) *Grade A milk prices.* Each handler shall pay, in addition to the prices provided in paragraphs (b), (c), and (d) of this section, $0.25 per hundredweight with respect to all skim milk and butterfat in milk received from Grade A producers up to an amount equivalent to such handler's total quantity of producer milk classified as Class I milk and Class II milk pursuant to § 971.4 (e) (10).

6. Delete § 971.7 (c) (1) and substitute therefor the following:

(1) Combining into one total the values for skim milk and butterfat of all handlers who made payments pursuant to § 971.8 (b) for the previous month, except the values provided by § 971.5 (e);

7. Add the following as § 971.7 (c) (7):

(7) To the uniform price computed pursuant to subparagraph (6) of this paragraph add an amount computed (to the nearest cent per hundredweight) by dividing the total of the amounts added with respect to milk received from Grade A producers pursuant to § 971.5 (e) by the total hundredweight of milk received from Grade A producers. The result shall be known as the "Grade A uniform price" per hundredweight for milk of 3.5 percent butterfat content.

8. Delete § 971.8 (a) (1) and substitute therefor the following:

(1) Except as set forth in subparagraph (2) of this paragraph, on or before the 17th day after such month, to each producer not a Grade A producer at not less than the uniform price and to each Grade A producer at not less than the Grade A uniform price.

[F. R. Doc. 49-3193; Filed, Apr. 22, 1949; 9:04 a. m.]

[7 CFR, Part 972]

HANDLING OF MILK IN TRI-STATE MARKETING AREA

DECISION WITH RESPECT TO PROPOSED MARKETING AGREEMENT AND PROPOSED AMENDMENT TO ORDER, AS AMENDED

Pursuant to Public Act No. 10, 73d Congress (May 12, 1933), as amended, and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (hereinafter referred to as the "act"), and the rules of practice and procedure, as amended, governing proceedings to formulate marketing agreements and orders (7 CFR., Supps., 900.1 et seq.; 12 F. R. 1159, 4904), a public hearing was held at Gallipolis, Ohio, on February 16 and 17, 1949, after the issuance of a notice on January 31, 1949, (14 F. R. 488).

Upon the basis of the evidence introduced at the hearing and the record thereof, the Assistant Administrator, Production and Marketing Administration, on March 11, 1949, filed with the Hearing Clerk, United States Department of Agriculture, his recommended decision in this proceeding. The notice of filing of such recommended decision and opportunity to file written exceptions thereto was published in the FEDERAL REGISTER (14 F. R. 1215).

Exceptions were filed on behalf of The Scioto County Cooperative Milk Producers Association, The Athens Milk Sales, Inc., The Marietta Cooperative Milk Producers Association and Huntington Interstate Milk Producers Association. These exceptions have been considered and appropriate revisions made. To the extent to which the findings and conclusions of the recommended decision as hereinafter modified, are at variance with the exceptions, such exceptions are hereby overruled.

The material issues and the findings and conclusions of the recommended decision (F. R. Doc. 49-1994, 14 F. R. 1215) are hereby approved and adopted as the material issues and the findings and conclusions of this decision as if set forth in full herein subject to the following amendments:

1. Insert the following paragraph immediately after line 10 in column two, 14 F. R. 1215 (F. R. Doc. 49-1994):

Certain of the issues covered by the hearing on February 16 and 17, 1949, were considered in light of contentions that an emergency condition prevailed in the market. It was argued in the exceptions that emergency procedure should have been employed in the issuance of a decision on such issues. Although a hearing notice may be issued on the basis of minimum notice requirements and include provision for receiving evidence with respect to both economic and emergency conditions which relate to the proposals to be heard, the determination to use emergency procedure in taking action on the subsequent conclusions reached must be based upon the evidence adduced at the hearing. It is not to be inferred from the statement in the hearing notice concerning the taking of evidence on the emergency character of the proposals that the fact of an emergency has been established. Support for a claim of an emergency therefore must rest in the evidence in a manner similar to the support for any proposed provision to be included in an order. It is determined on the basis of the evidence presented at the hearing of February 16 and 17, 1949, that existing conditions would not have justified the waiving of

a recommended decision and opportunity to file exceptions thereto.

2. Delete the fourth paragraph beginning in column two, 14 F. R. 1215 (F. R. Doc. 49–1994) and substitute therefor the following:

The witness for the proponents on this proposal testified that he was not familiar with the reason for the 3-cent deduction from the price of butter in the "butter-powder" formula, but that he did not think it was justified. With respect to the proposed reduction of the 5.5 cent deduction from the price of nonfat dry milk solids such witness stated that he was not qualified to testify. In support of the proposed change in the nonfat dry milk solids portion of the formula proponents requested that certain testimony contained in the record of a hearing at Columbus, Ohio, be incorporated in the record by reference. This request was denied, as explained above, and such testimony therefore may not be used as a basis for making the proposed revision. No other testimony was presented in support of these proposed changes except for general statements in the testimony that a higher price level for producer milk is desirable.

Marketing agreement and order. Annexed hereto and made a part hereof are two documents entitled, respectively, "Marketing Agreement Regulating the Handling of Milk in the Tri-State Marketing Area," and "Order Amending the Order, as Amended, Regulating the Handling of Milk in the Tri-State Marketing Area," which have been decided upon as the appropriate and detailed means of effecting the foregoing conclusions. These documents shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure covering proceedings to formulate marketing agreements and orders have been met.

Determination of representative period. The month of February 1949 is hereby determined to be the representative period for the purpose of ascertaining whether the issuance of an order amending the order, as amended, regulating the handling of milk in the Tri-State milk marketing area in the manner set forth in the attached amending order is approved or favored by producers who during such period were engaged in the production of milk for sale in the marketing area specified in such marketing order, as amended.

It is hereby ordered, That all of this decision, except the attached marketing agreement, be published in the FEDERAL REGISTER. The regulatory provisions of said marketing agreement are identical with those contained in the attached order which will be published with the decision.

This decision filed at Washington, D. C., this 19th day of April 1949.

[SEAL] CHARLES F. BRANNAN,
Secretary of Agriculture.

Order,[1] *Amending the Order, as Amended, Regulating the Handling of Milk in the Tri-State Marketing Area*

§ 972.0 *Findings and determinations.* The findings and determinations hereinafter set forth are supplementary to and in addition to the findings and determinations made in connection with the issuance of this order and of each of the previously issued amendments thereto; and all of said previous findings and determinations are hereby ratified and affirmed except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) *Findings upon the basis of the hearing record.* Pursuant to Public Act No. 10, 73d Congress (May 12, 1933), as amended, and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (hereinafter referred to as the "act"), and the rules of practice and procedure covering the formulation of marketing agreements and orders (7 CFR, Supps., 900.1 et seq.; 12 F. R. 1159, 4904), a public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order, as amended, regulating the handling of milk in the Tri-State milk marketing area. Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order, as amended and as hereby further amended, and all of the terms and conditions of said order, as amended and as hereby further amended, will tend to effectuate the declared policy of the act;

(2) The prices calculated to give milk produced for sale in said marketing area a purchasing power equivalent to the purchasing power of such milk as determined pursuant to sections 2 and 8e of the act are not reasonable in view of the price of foods, available supplies of feeds, and other economic conditions which affect market supplies of and demand for such milk, and the minimum prices specified in the order, as amended, and as hereby further amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The said order, as amended, and as hereby further amended, regulates the handling of milk in the same manner as and is applicable only to persons in the respective classes of industrial and commercial activity specified in a marketing agreement upon which hearings have been held.

Order relative to handling. It is therefore ordered, that on and after the effective date hereof, the handling of milk in the Tri-State marketing area shall be in conformity to and in compliance with the terms and conditions of the aforesaid order, as amended, and as hereby further amended; and the aforesaid order, as amended, is hereby further amended as follows:

1. Delete from § 972.5 (b) the proviso contained therein and substitute therefor the following: *"Provided,* That if, as computed by the market administrator (1) the total quantity of producer milk classified as Class III milk is less than 12 percent of total producer milk receipts at either Huntington district plants or all fluid milk plants of handlers for the 12-month period ending with the month of August in any year, the prices of Class I milk and Class II milk for the following October, November, December, and January shall be increased 25 cents per hundredweight over the price otherwise applicable pursuant to this paragraph and paragraph (c) of this section; or (2) the total quantity of producer milk classified as Class III milk is more than 18 percent of total producer milk receipts at either Huntington district plants or all fluid milk plants of handlers for the 12-month period ending with the month of February (not February 1949) in any year, the prices of Class I milk and Class II milk for the following April, May, June and July shall be decreased 25 cents under the price otherwise applicable pursuant to this paragraph and paragraph (c) of this section: *And provided further,* That the prices for Class I milk and Class II milk for the months of October through January, inclusive, shall not be lower than the respective prices computed for such classes pursuant to this section for the preceding September, and the prices for Class I milk and Class II milk for the months of April through July, inclusive, shall not be higher than the respective prices computed for such classes pursuant to this section for the preceding March."

[F. R. Doc. 49–3194; Filed, Apr. 22, 1949; 9:05 a. m.]

[1] This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

FEDERAL COMUNICATIONS COMMISSION

[Docket No. 9289]

CLASS B FM BROADCAST STATIONS

NOTICE OF PROPOSED RULE MAKING

In the matter of amendment of revised tentative allocation plan for Class B FM broadcast stations to add Channel No. 254 to Albertville, Alabama; Docket No. 9289.

1. Notice is hereby given of proposed rule making in the above entitled matter.

2. It is proposed to amend the revised tentative allocation plan for Class B FM broadcast stations to the extent that Channel No. 254 will be allocated to Albertville, Alabama for the purpose of providing for a more equitable and efficient utilization of FM facilities.

3. Authority for the adoption of the proposed amendment is contained in sections 303 (c), (d), (f), and (r) and 307 (b) of the Communications Act of 1934, as amended.

4. Any interested party who is of the opinion that the proposed amendment should not be adopted or should not be adopted in the form set forth herein, may

file with the Commission, on or before May 16, 1949, a written statement or brief setting forth his comments. At the same time persons favoring the amendment as proposed may file statements in support thereof. The Commission will consider all comments that are received before taking final action in the matter, and if any comments are received which appear to warrant the Commission in holding an oral argument before final action is taken, notice of the time and place of such oral argument will be given interested parties.

5. In accordance with the provisions of § 1.764 of the Commission's rules and regulations, an original and 14 copies of all statements, briefs or comments filed shall be furnished the Commission.

Adopted: April 13, 1949.

Released: April 14, 1949.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] T. J. SLOWIE,
Secretary.

[F. R. Doc. 49-3176; Filed, Apr. 22, 1949; 8:59 a. m.]

[Docket No. 9288]

[47 CFR, Part 15]

RESTRICTED RADIATION DEVICES

NOTICE OF PROPOSED RULE MAKING

1. Notice is hereby given of proposed rule making in the above-entitled matter.

2. The Commission's rules governing Restricted Radiation Devices, §§ 15.1–15.4 of the rules and regulations, provide in substance that any apparatus generating a radio frequency electromagnetic field not exceeding 15 microvolts per meter at a distance of lambda over two pi (157,000 feet divided by the frequency of operation in kilocycles; i. e., 98 to 285 feet from the point or line radiator in the standard broadcast band) is not subject to the other rules of the Commission: *Provided*, That no objectionable interference to the reception of authorized radio signals results. In accordance with these rules many types of unlicensed operation are presently being carried on. Among these are: low power "broadcasting," notably by college campus carrier systems, phono-oscillator operation, control of doors, model aircraft, lights, electrical equipment, etc., use in stage prompting, coaching, church and school activities, transmission of music throughout industrial plants and other buildings, warning devices, power line maintenance, intercommunication at mines, oil fields and large construction projects, traffic control at railway marshalling yards, remote control of public address systems, plant guard systems, and in connection with spraying, pollinating and other agricultural application. Low power radiation may also exist as an unwanted result of receiver oscillation, and from other causes.

3. It will be noted that the proposed amendments of Part 15 of the Commission's rules may involve subsequent amendments of Part 3 (Broadcast) and Part 18 (Industrial, Scientific and Medical) of the Commission's rules, to include certain types of operation presently carried on under the existing Part 15.

4. The Commission is especially desirous of obtaining information concerning the nature of devices presently being operated under Part 15 of the rules, as well as obtaining views regarding revision of the rules as proposed in this proceeding. The proposed amendments contained below, accordingly, set forth only the broad administrative and engineering factors to be considered by the Commission in its proposed changes in the present rules. Under these circumstances the receipt of views and comments filed in connection with this proceeding may provide a basis for certain changes and enlargements in the text as it now appears below.

5. This notice is issued pursuant to the provisions of sections 301 and 303 (a), (b), (c), (e), (f), (g), (n) and (r) of the Communications Act of 1934, as amended.

6. Any interested person may file with the Commission on or before June 1, 1949, a statement or brief setting forth his comments in regard to the proposed amendments of the Commission's rules. The Commission will consider all such comments before taking action in the matter, and if any comments are submitted which appear to warrant the holding of a hearing or oral argument, notice of the time and place of such hearing or oral argument will be given.

7. In accordance with the provisions of § 1.764 of the Commission's rules, an original and 14 copies of all statements, briefs or comments filed shall be furnished to the Commission.

Adopted: April 13, 1949.

Released: April 13, 1949.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] T. J. SLOWIE,
Secretary.

1. In recognition of its continuing responsibility under section 301 of the Communications Act of 1934, as amended, to promulgate rules and technical standards aimed at the suppression of radio energy which, regardless of source, is an actual or potential source of interference to authorized radio signals in interstate commerce, the following are approaches which will be considered by the Commission in drafting and adopting formal rules and standards for those radio frequency devices which are not at present specifically governed by any part of the Commission's rules and regulations except in so far as the provisions of the existing Part 15 of the rules may be applicable.[1]

[1] Persons operating restricted radiation devices or incidental radiation devices in accordance with the proposed rules shall not be deemed to have any vested or recognizable right to the continued use of any given frequency, by virtue of prior registration or certification of equipment thereunder. Such operation will be subject to the condition that no harmful interference will be caused to any radio service or station and will be subject to such mutual interference as may be caused by other restricted radiation or incidental radiation devices, or from any authorized source.

2. In the proposed adoption of such rules and standards, the mentioned radio frequency devices will be divided into two categories:

(a) *Incidental radiation devices.* Devices which radiate energy substantially from a point source which radiations are incidental to the work to be accomplished, and which devices do not require the use of associated receivers. An exception shall be made in the case of laboratory test equipment using associated receivers.

(b) *Restricted radiation devices.* All other devices which radiate energy and are not covered by the definition of Incidental Radiation Devices or are not otherwise specifically covered in the rules and regulations of the Commission.

3. Illustrative of some Incidental Radiation Devices are laboratory signal generators, beat frequency audio oscillators and radio receiver oscillators. The Commission will consider the desirability of including regulations governing incidental radiation devices within the provisions of Part 18 of the Commission's rules and regulations relating to industrial, scientific and medical service as appropriately amended, or of including the provisions regulating such devices under a separate rule. Since the primary consideration involved in the regulation of the use of this type of apparatus is the actual or potential interference to other services, the Commission will consider and promulgate rules under which such devices may be permitted to operate without registration or licensing requirements, subject however, to one or both of the following radiation limitations:

(a) Limit the field to fixed value at a fixed distance from the radiating element, e. g. 15 uv/m at 100 feet; and/or

(b) Limit the field to values which vary with frequency because of practical limitations upon suppression which can be obtained, e. g. 15 uv/m at a distance of lambda over two pi or 157,000/frequency in kilocycles feet.

4. Illustrative of some restricted radiation devices, as defined in paragraph 2 (b) above, are wireless record players, carrier current communications systems, and remote control devices using radio. Since restricted radiation devices will, by definition, be used for the accomplishment of some specific purpose, and since the use of such devices will be a potential source of harmful interference to recognized radio services, it will be necessary that some system of regulation be adopted. Such regulation may take the form of certification, type approval, registration and/or licensing, whichever appears to be the most practicable for any given type of operation. It is also proposed that no "low power broadcasting" be permitted on any frequency other than in the band 535–1605 kc, and then only in accordance with the Commission's rules governing broadcast services, as appropriately amended. Use of the radio spectrum by restricted radiation devices will be subject to the provisions indicated:

(a) *10–200 kc.* i. Carrier current systems operating in this band will be limited to radiation of 15 uv/m at a distance

of lambda over two pi feet computed from the line radiator.

ii. Restricted radiation devices not employing carrier current techniques will not be permitted on these frequencies.

(b) *200–535 kc.* i. No restricted radiation devices will be permitted on these frequencies.

(c) *535–1605 kc.* i. Because of the social impact of broadcasting upon the general public and the responsibilities of the Commission in regard to the regulation of broadcasting; and

ii. Because of the probability of interference being caused to reception in the standard broadcast services by the operation of devices in this band in view of the number of broadcast receivers and transmitters now in operation:

A. Broadcasting on these frequencies will only be permitted in compliance with such rules and limitations covering eligibility, licensing, technical standards and other subjects as may now be found in the Commission's rules governing the standard broadcast services, or as they may hereafter be amended;

B. Because of the present number of wireless record players in operation and their necessity for using standard broadcast receivers, such devices will be permitted to operate on these frequencies subject to the following provisions:

I. Power input to the final radio frequency stage shall not exceed .1 watt.

II. The field intensity measured at a distance greater than lambda over two pi feet shall not exceed 15 uv/m as measured from the restricted radiation device or associated apparatus.

III. No harmful interference shall be permitted to any radio service.

IV. No broadcasting shall be permitted.

V. After January 1, 1950 compliance with this part (4 (c) ii B), shall be certified by a competent engineer or the wireless record player shall have been type approved by the Commission.

C. No other restricted radiation devices will be permitted to operate in this band.

(d) *1605–kc–27.23 Mc.* i. No restricted radiation devices will be permitted to operate on these frequencies.

(e) *27.23–27.28 Mc.* i. No broadcast services will be permitted on these frequencies.

ii. All restricted radiation devices not used for broadcasting purposes will be permitted subject to the following provisions:

A. Power input to the final radio frequency stage shall not exceed 0.1 watt.

B. The field intensity measured at a distance greater than 100 feet shall not exceed 15 uv/m, as measured from the restricted radiation device or associated apparatus.

C. No harmful interference shall be permitted to any other radio service operating on other frequency band.

D. After January 1, 1950, compliance with this part, (4 (e) (ii)), shall be certified by a competent engineer or the device shall have been type approved by the Commission.

iii. The Commission has under consideration the use of these frequencies by similar devices with power in excess of that hereabove set forth subject to eligibility requirements, licensing requirementjs and technical standards to be hereafter determined and to be incorporated in such rules and services as the Commission shall deem advisable.

(f) *27.28 Mc and above.* i. No restricted radiation devices or broadcast devices except as otherwise provided by the Commission's rules will be permitted on these frequencies.

[F. R. Doc. 49–3177; Filed, Apr. 22, 1949; 9:00 a. m.]

NOTICES

POST OFFICE DEPARTMENT

NEWFOUNDLAND

CHANGE IN MAILING ADDRESS AND AIR RATE

1. *Effective date.* As Newfoundland will become one of the provinces of Canada beginning April 1, 1949, the rates and conditions applicable to Canada will apply to Newfoundland (including Labrador), effective that date. Mail articles should be addressed to "Canada" as country of destination.

2. *Air rate.* It is to be noted specially that air parcel-post service to Newfoundland will be discontinued March 31, 1949. Merchandise may be sent by air at the letter rate of six cents per ounce; weight limit 60 pounds.

(R. S. 161, 396, 398, secs. 304, 309, 42 Stat. 24, 25, 48 Stat. 943; 5 U. S. C. 22, 369, 372)

[SEAL] J. M. DONALDSON,
Postmaster General.

[F. R. Doc. 49–3155; Filed Apr. 22, 1949; 8:55 a. m.]

DEPARTMENT OF AGRICULTURE

Production and Marketing Administration

PANHANDLE LIVESTOCK COMMISSION CO.

NOTICE RELATIVE TO POSTED STOCKYARDS

It has been ascertained that the Panhandle Livestock Commission Company at Amarillo, Texas, originally posted on September 21, 1939, as being subject to the Packers and Stockyards Act, 1921, as amended, (7 U. S. C. 181 et seq.), no longer comes within the definition of a stockyard under said act. Therefore, notice is given to the owner of such stockyard and to the public that such stockyard is no longer subject to the provisions of said act.

There is no legal justification for not deposting promptly a stockyard which no longer comes within the definition of a stockyard contained in said act. Delay in deposting would prevent the due and timely administration of the act. Therefore, good cause is found pursuant to section 4 (a) of the Administrative Procedure Act that notice and public procedure on the foregoing rule are impracticable.

The foregoing rule is in the nature of a rule granting an exemption or relieving a restriction and, therefore, may be made effective in less than 30 days after publication thereof in the FEDERAL REGISTER. This notice shall become effective upon publication thereof in the FEDERAL REGISTER.

(7 U. S. C. 181 et seq.)

Done at Washington, D. C., this 18th day of April 1949.

[SEAL] PRESTON RICHARDS,
Acting Director, Livestock Branch, Production and Marketing Administration.

[F. R. Doc. 49–3195; Filed, Apr. 22, 1949; 9:05 a. m.]

FEDERAL COMUNICATIONS COMMISSION

[Docket No. 9282]

SOUTHERN CALIFORNIA BROADCASTING CO. AND SOUTHERN CALIFORNIA TRADE UNIONS BROADCASTING ASSN.

ORDER DESIGNATING APPLICATION FOR HEARING

In re application of Marshall S. Neal, Paul Buhlig, E. T. Foley and Edwin Earl, d/b as Southern California Broadcasting Company (assignor), Southern California Trade Unions Broadcasting Association (assignee), File No. BAL–797, Docket No. 9282; for assignment of license of station KWKW, Pasadena, California.

At a session of the Federal Communications Commission, held at its offices in Washington, D. C., on the 6th day of April 1949;

The Commission having under consideration the above entitled application for consent to assignment of license of station KWKW, Pasadena, California from Marshal S. Neal, Paul Buhlig, E. T. Foley and Edwin Earl, d/b as Southern California Broadcasting Company to Southern California Trade Unions Broadcasting Association, and not being satisfied that it is in full possession of information as is required by the Communications Act of 1934, as amended, and acting pursuant to section 310 (b) of said act;

It is ordered, That the above-entitled application be designated for hearing at a time and place to be designated by sub-

sequent order of the Commission, upon the following issues:

1. To determine whether the proposed assignee is legally, financially and otherwise qualified to operate or control station KWKW, Pasadena, California.

2. To determine the contractual agreements existing between the proposed assignor and assignee regarding station KWKW, the nature and terms of such agreements and the effect thereof upon the operation of the station by the proposed assignee.

3. To determine whether the method of payment by assignee to assignor of the purchase of station KWKW would in any way affect the proposed program service of station KWKW or conduce to the overcommercialization thereof.

4. To determine whether the contractual agreement existing between the proposed assignor and assignee in any way provides for the continued exercise of control by the assignor over the operations, policies or management of station KWKW and whether such agreement constitutes in any way a delegation or surrender to the assignor, by the assignee, of the duties and responsibilities required to be undertaken by the licensee of a broadcast station.

5. To determine whether, in the event of default of payment by the assignee under the terms of the contract of sale for station KWKW, any right to reversion of the license of that station will exist in the assignor or its nominee.

6. To determine the financial ability of the Joint Council of Teamster No. 42 of Los Angeles, California to underwrite the assignee in the event of default in payment by the assignee and the plans of that Council with respect to station KWKW in event of such default.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] T. J. SLOWIE,
Secretary.

[F. R. Doc. 49-3171; Filed, Apr. 22, 1949; 8:58 a. m.]

E. F. PEFFER (KGDM-TV)

ORDER DESIGNATING APPLICATION FOR HEARING

In re application of E. F. Peffer (KGDM-TV), Stockton, California, File No. BMPCT-473; for additional time in which to complete construction of TV station KGDM-TV at Stockton, California.

At a session of the Federal Communications Commission held at its offices in Washington, D. C., on the 6th day of April 1949;

The Commission having under consideration the above-entitled application of E. F. Peffer (File No. BMPCT-473) for additional time in which to complete construction of TV broadcast station KGDM-TV, Stockton, California; and

It appearing, that, on July 21, 1948, the Commission granted E. F. Peffer a construction permit for a TV broadcast station at Stockton, California (BPCT-56); and

It further appearing, that the construction of the TV broadcast station authorized on July 21, 1948; has not been completed, and the Commission being fully advised in the premises;

It is ordered, That pursuant to sections 309 and 319 of the Communications Act of 1934, as amended, the above-entitled application (File No. BMPCT-473) is designated for hearing at a time and place to be specified in a subsequent order upon the following issues:

1. To determine whether E. F. Peffer has been diligent in proceeding with the construction of the television station KGDM-TV at Stockton, California, as authorized by the construction permit granted July 21, 1948 (File No. BPCT-56).

2. To determine whether it would be in the public interest, convenience and necessity to grant the application of E. F. Peffer (File No. BMPCT-473) for additional time in which to construct the TV Broadcast Station at Stockton, California, as authorized by the Commission on July 21, 1948 (File No. BPCT-56).

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] T. J. SLOWIE,
Secretary.

[F. R. Doc. 49-3172; Filed, Apr. 22, 1949; 8:58 a. m.]

[Docket No. 8675]

BLACK HAWK BROADCASTING CO. (KWWL)

ORDER DESIGNATING APPLICATION FOR HEARING ON STATED ISSUES

In re application of Black Hawk Broadcasting Company (KWWL), Waterloo, Iowa, Docket No. 8675, File No. BMP-3224; for modification of construction permit.

At a session of the Federal Communications Commission, held at its offices in Washington, D. C., on the 14th day of April 1949;

The Commission having under consideration the above-entitled application to change the facilities of Station KWWL, Waterloo, Iowa, from frequency 1320 kilocycles, 1 kilowatt power, daytime only to frequency 1330 kilocycles, 5kw power, unlimited time, to change transmitter, install directional antenna system, and to specify studio location;

It is ordered, That, pursuant to section 309 (a) of the Communications Act of 1934, as amended, the said application is designated for hearing, at a time and place to be designated by subsequent order of the Commission, upon the following issues:

1. To determine the areas and populations which may be expected to gain or lose primary service from the operation of Station KWWL as proposed, and the character of other broadcast service available to those areas and populations.

2. To determine whether the operation of Station KWWL as proposed would involve objectionable interference with Stations WLOL, Minneapolis, Minnesota; WHBL, Sheboygan, Wisconsin; WJPS, Evansville, Indiana, or with any other existing broadcast stations and, if so, the nature and extent thereof, the areas and populations affected thereby, and the availability of other broadcast service to such areas and populations.

3. To determine whether the operation of Station KWWL as proposed would involve objectionable interference with the services proposed in any other pending applications for broadcast facilities and, if so, the nature and extent thereof, the areas and populations affected thereby, and the availability of other broadcast service to such areas and populations.

4. To determine whether the installation and operation of Station KWWL as proposed would be in compliance with the Commission's rules and Standards of Good Engineering Practice concerning standard broadcast stations with particular reference to the areas and population to receive satisfactory service.

5. To determine whether the expected maximum fields provide tolerances sufficiently in excess of the theoretical fields to permit satisfactory adjustment and maintenance of the array.

It is further ordered, That Independent Merchants Broadcasting Co., licensee of Radio Station WLOL, Minneapolis, Minnesota; WHBL, Inc., licensee of Radio Station WHBL, Sheboygan, Wisconsin; and WJPS, Inc., licensee of Radio Station WJPS, Evansville, Indiana, are made parties to this proceeding.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] T. J. SLOWIE,
Secretary.

[F. R. Doc. 49-3173; Filed, Apr. 22, 1949; 8:59 a. m.]

[Docket Nos. 8187, 9291]

FELIX H. MORALES AND JOHN F. COOKE

ORDER DESIGNATING APPLICATION FOR CONSOLIDATED HEARING ON STATED ISSUES

In re applications of Felix H. Morales, Houston, Texas, Docket No. 8187, File No. BP-5397; John F. Cooke, Houston, Texas, Docket No. 9291, File No. BP-7158; for construction permits.

At a session of the Federal Communications Commission, held at its offices in Washington, D. C., on the 14th day of April 1949;

The Commission having under consideration the above-entitled applications each requesting a permit to construct a new standard broadcast station in Houston, Texas. Felix H. Morales requests the facilities 1510 kc, 1 kw, D and John F. Cooke requests the facilities 1480 kc, 1 kw, D;

It is ordered, That, pursuant to section 309 (a) of the Communications Act of 1934, as amended, the said applications are designated for hearing in a consolidated proceeding at a time and place to be designated by subsequent order of the Commission, upon the following issues:

1. To determine the legal, technical, financial, and other qualifications of each of the two individual applicants to construct and operate the proposed stations.

2. To determine the areas and populations which may be expected to gain or lose primary service from the operation of the proposed stations and the character of other broadcast service available to those areas and populations.

3. To determine the type and character of program service proposed to be rendered and whether it would meet the requirements of the populations and areas proposed to be served,

4. To determine whether the operation of the proposed stations would involve objectionable interference with any existing broadcast stations and, if so, the nature and extent thereof, the areas and populations affected thereby, and the availability of other broadcast service to such areas and populations.

5. To determine whether the operation of the proposed stations would involve objectionable interference with the services proposed in any other pending applications for broadcast facilities and, if so, the nature and extent theerof, the areas and populations affected thereby, and the availability of other broadcast service to such areas and populations.

6. To determine whether the installation and operation of the proposed stations would be in compliance with the Commission's rules and Standards of Good Engineering Practice concerning standard broadcast stations.

7. To determine on a comparative basis which, if either, of the applications in this consolidated proceeding should be granted.

It is further ordered, That, if, as a result of the consolidated proceeding, it appears that, were it not for the issues pending in the hearing regarding clear channels (Docket No. 6741) and in the hearing regarding daytime skywave transmissions (Docket No. 8333) and the Commission's policy pertaining thereto as announced in the public notices of August 9, 1946, and May 8, 1947, the public interest would be best served by a grant of the above-entitled application of Felix H. Morales, then such application shall be returned to the pending file until after conclusion of the said hearings regarding clear channels and daytime skywave transmissions.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] T. J. SLOWIE,
Secretary.

[F. R. Doc. 49-3174; Filed, Apr. 22, 1949; 8:59 a. m.]

KWFC

PUBLIC NOTICE CONCERNING THE PROPOSED ASSIGNMENT OF LICENSE [1]

The Commission hereby gives notice that on March 20, 1949, there was filed with it an application (BAL-853) for its consent under section 310 (b) of the Communications Act to the proposed assignment of license of station KWFC, Hot Springs, Arkansas, from Clyde E. Wilson to Spa Broadcasting Co., Inc. The proposal to assign the license arises out of two contracts of March 1, 1949, and March 2, 1949, pursuant to which the assignor proposes to transfer and sell said broadcast facilities to Spa Broadcasting Co., Inc., of Hot Springs, Arkansas, the proposed assignee, for the consideration of $11,000 and issuance to him or his assigns of 690 shares of stock in said corporation; stockholders in said corporation are: Clyde E. Wilson (assignor)—10 shares; N. B. Burch—90 shares; Frank A. Browne—10 shares; he also proposes to assign and cause to be issued 500 of said 690 shares of stock to N. B. Burch, Frank A. Browne and his wife, Catherine Burch Browne, jointly, for a consideration of $50,000 payable by a promissory note, over a period of approximately nine years, more or less, in equal monthly payments and that he shall retain, at least, 25% of the capital stock in said corporation. Further information as to the arrangements may be found with the application and associated papers which are on file at the offices of the Commission in Washington, D. C.

Pursuant to § 1.321 which sets out the procedure to be followed in such cases including the requirement for public notice concerning the filing of the application, the Commission was advised by applicant on March 20, 1949, that starting on March 31, 1949, notice of the filing of the application would be inserted in a newspaper of general circulation at Hot Springs, Arkansas, in conformity with the above section.

In accordance with the procedure set out in said section, no action will be had upon the application for a period of 60 days from March 31, 1949, within which time other persons desiring to apply for the facilities involved may do so upon the same terms and conditions as set forth in the above described contract.

(Sec. 310 (b), 48 Stat. 1086; 47 U. S. C. 310 (b))

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] T. J. SLOWIE,
Secretary.

[F. R. Doc. 49-3175; Filed, Apr. 22, 1949; 8:59 a. m.]

[1] Section 1.321, Part 1, Rules of Practice and Procedure.

FEDERAL POWER COMMISSION

[Docket No. G-962]

TENNESSEE GAS TRANSMISSION CO.

ORDER FIXING DATE OF HEARING

APRIL 18, 1949.

On April 18, 1949, Tennessee Gas Transmission Company filed a motion requesting that its amended application under the above docket be set for further hearing and invited attention to the fact that the Commission on December 23, 1948, acting pursuant to a motion filed by Applicant postponed the date for hearing to a date and place to be fixed by further order of the Commission upon not less than 15 days' notice.

The Commission orders:

(A) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by section 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure a public hearing be held commencing on May 4, 1949, at 10:00 a. m. (e. d. s. t.) in the Hearing Room of the Federal Power Commission, 1800 Pennsylvania Avenue NW., Washington 25, D. C., concerning the matters presented and the issues involved in such amended application.

(B) Interested State commissions may participate as provided by §§ 1.8 and 1.37 (f) of the Commission's rules of practice and procedure as well as all interveners of record in this proceeding.

Date of issuance: April 19, 1949.

By the Commission.

[SEAL] LEON M. FUQUAY,
Secretary.

[F. R. Doc. 49-3152; Filed, Apr. 22, 1949; 8:55 a. m.]

[Docket No. G-1189]

ARKANSAS-OKLAHOMA GAS CO.

NOTICE OF APPLICATION

APRIL 19, 1949.

Notice is hereby given that on April 5, 1949, Arkansas-Oklahoma Gas Company (Applicant), a Delaware corporation, having its principal place of business at Fort Smith, Arkansas, filed an application for a certificate of public convenience and necessity, pursuant to section 7 of the Natural Gas Act, as amended, authorizing the construction and operation of approximately 11.2 miles of 12-inch natural gas pipeline extending from the terminus of Applicant's existing 12-inch pipeline near the Town of Spiro, Oklahoma to the Arkansas-Oklahoma State line, near South Fort Smith, Arkansas, to improve service in the Fort Smith area.

Applicant states that the proposed facilities will be an extension of Applicant's existing 12-inch pipeline looping Applicant's existing 10-inch line from the Spiro gas field, Le Flore County, Oklahoma, to the Arkansas-Oklahoma state line.

Applicant recites that the increased withdrawals of natural gas from the Spiro gas field have lowered the rock pressures of the wells; that the increased quantities of natural gas to meet Applicant's expanding market requirements have necessitated an increase in the pressures in the pipelines leading from the Spiro field; and that the pressure in the existing 10-inch line should not be increased. The proposed loop line extension will enable Applicant to operate the Fort Smith line at lower pressures.

Applicant estimates that the over-all capital cost of the proposed facilities will be approximately $193,000, to be financed out of company funds.

Any interested State commission is requested to notify the Federal Power Commission whether the application should be considered under the cooperative provisions of § 1.37 of the Commission's rules of practice and procedure and, if so, to advise the Federal Power Commission as to the nature of its interest in the matter and whether it desires a conference, the creation of a board, or a joint or concurrent hearing, together with reasons for such a request.

The application of Arkansas-Oklahoma Gas Company is on file with the Commission and open to public inspection. Any person desiring to be heard or to make any protest with reference to the application shall file with the

Federal Power Commission, Washington, D. C., not later than 15 days from the date of publication of this notice in the FEDERAL REGISTER, a petition to intervene or protest. Such petition or protest shall conform to the requirements of §§ 1.8 or 1.10, whichever is applicable, of the rules of practice and procedure.

[SEAL] LEON M. FUQUAY, *Secretary.*

[F. R. Doc. 49-3168; Filed, Apr. 22, 1949; 8:59 a. m.]

SECURITIES AND EXCHANGE COMMISSION

[File No. 70-2070]

DALLAS POWER & LIGHT CO.

ORDER RELEASING JURISDICTION OVER PAYMENT OF LEGAL FEES

At a regular session of the Securities and Exchange Commission held at its office in the city of Washington, D. C. on the 19th day of April A. D. 1949.

The Commission having, by orders dated March 17, 1949 and March 29, 1949, permitted to become effective an amended declaration filed by Dallas Power & Light Company ("Dallas"), an electric utility subsidiary of Texas Utilities Company, a subsidiary of American Power & Light Company, in turn a subsidiary of Electric Bond and Share Company, the three latter companies being registered holding companies, regarding the issue and sale by Dallas, pursuant to the competitive bidding requirements of Rule U-50, of $10,000,000 principal amount of First Mortgage Bonds, 2⅞% Series, due 1979; and

Said order of March 29, 1949 having contained a reservation of jurisdiction over the proposed payment by Dallas and by the successful bidders for said bonds of legal fees, as follows:

Reid & Priest (New York counsel)	$9,500
Beekman & Bogue (counsel for successful bidders)	8,000

and this Commission having examined the evidence submitted with respect to the legal services rendered in these proceedings, and said law firms, Dallas, and the succesful bidders having agreed upon the payment of fees in the amounts listed above, subject to this Commission's order; and

The Commission on the basis of its examination of the record finding that the payment of legal fees to the firms indicated in the amounts proposed is not unreasonable, and finding it appropriate in the public interest to release jurisdiction over the payment of such fees:

It is ordered, That jurisdiction heretofore reserved with respect to the payment of fees and expenses of counsel in connection with the issuance and sale of said bonds by Dallas, including fees and expenses payable to counsel for the successful bidders be, and the same hereby is, released.

By the Commission.

[SEAL] ORVAL L. DUBOIS, *Secretary.*

[F. R. Doc. 49-3162; Filed, Apr. 22, 1949; 8:57 a. m.]

[File 70-2084]

UTAH POWER & LIGHT CO.

ORDER GRANTING APPLICATION AND PERMITTING DECLARATION TO BECOME EFFECTIVE

At a regular session of the Securities and Exchange Commission held at its office in the city of Washington, D. C. on the 18th day of April A. D. 1949.

Utah Power & Light Company ("Utah"), a registered holding company and an electric utility company, having filed an application-declaration and amendment thereto pursuant to the Public Utility Holding Company Act of 1935, particularly sections 6 (a) and 7 thereof, and Rule U-50 of the rules and regulations promulgated thereunder, with respect to the following proposed transactions:

Utah proposes to issue and sell pursuant to the competitive bidding requirements of Rule U-50, $3,000,000 principal amount of --% First Mortgage Bonds due 1979 to be issued under and secured by the Company's presently existing Mortgage and Deed of Trust dated as of December 1, 1943 as supplemented by the First, Second and Third Supplemental Indentures and as further supplemented by a Fourth Supplemental Indenture to be dated as of May 1, 1949.

The application-declaration, as amended, indicates that the construction program of Utah and its wholly-owned subsidiary, The Western Colorado Power Company, for the year 1949 will require the expenditure of approximately $11,000,000, which will be met in part by the proceeds from the sale of the proposed Bonds together with the proceeds from sales of common stock and additional bonds to be made later in the year.

The applicant-declarant requests that the Commission's order herein be issued as promptly as may be practicable, and that it become effective forthwith upon the issuance thereof.

The application-declaration having been filed on March 1, 1949 and an amendment thereto having been filed on April 1, 1949, notice of said filing having been given in the form and manner prescribed by Rule U-23 promulgated pursuant to the said act, and the Commission not having received a request for hearing with respect to the application-declaration, as amended, within the period specified in said notice, or otherwise, and not having ordered a hearing thereon; and

The Commission finding with respect to the said application-declaration, as amended, that the requirements of the applicable provisions of the act and the rules thereunder have been satisfied, the Commission being of the opinion that it is appropriate to grant and permit to become effective said application-declaration, as amended, without the imposition of terms and conditions other than those hereinafter ordered, and the Commission also deeming it appropriate to grant applicant-declarant's request that the order herein become effective forthwith upon the issuance thereof;

It is ordered, Pursuant to said Rule U-23 and the applicable provisions of said act, that said application-declaration, as amended, be, and the same hereby is, granted and permitted to become effective forthwith, subject to the terms and conditions contained in Rule U-24 and subject to the following additional conditions:

(1) That the proposed sale of bonds of Utah shall not be consummated until the results of competitive bidding pursuant to Rule U-50 shall have been made a matter of record in this proceeding and a further order shall have been entered by the Commission in the light of the record so completed, which order may contain such further terms and conditions as may then be deemed appropriate.

(2) That jurisdiction be reserved with respect to all fees and expenses to be paid in connection with the proposed transactions.

By the Commission.

[SEAL] ORVAL L. DUBOIS, *Secretary.*

[F. R. Doc. 49-3161; Filed, Apr. 22, 1949; 8:57 a. m.]

[File No. 70-2103]

CINCINNATI GAS & ELECTRIC CO.

NOTICE REGARDING FILING OF AMENDMENT

At a regular session of the Securities and Exchange Commission, held at its office in the city of Washington, D. C., on the 19th day of April 1949.

The Cincinnati Gas & Electric Company ("Cincinnati"), a subsidiary of The United Corporation, a registered holding company, having filed an application with this Commission pursuant to the Public Utility Holding Company Act of 1935, particularly section 6 (b) thereof, with respect to the issue and sale by Cincinnati of an additional 249,334 shares of common stock, par value of $8.50 per share, to its common stockholders at the rate of one share of common stock for each nine shares of common stock held by them, the offering price of such shares to be supplied by amendment; and notice of said filing having been duly given in the form and manner prescribed by Rule U-23 promulgated pursuant to said act (Public Utility Holding Company Act Release No. 8986):

Notice is hereby given that an amendment to said application has been filed with this Commission by Cincinnati.

Notice is further given that any interested person may not later than April 27, 1949, at 5:30 p. m., e. d. s. t., request the Commission in writing that a hearing be held with respect to said amendment, stating the reasons for such request, the nature of his interest and the issues, if any, of fact or law raised by said amendment proposed to be controverted, or may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, 425 Second Street NW., Washington 25, D. C. At any time after April 27, 1949, said amendment may be granted as provided in Rule U-23 of the rules and regulations promulgated under the act or the Commission may exempt such transactions as provided in Rules U-20 (a) and U-100 thereof.

All interested persons are referred to said amendment which is on file in the

office of this Commission for a statement of the transactions therein proposed, which are summarized as follows:

Cincinnati proposes to reserve the right to stabilize the price of the common stock proposed to be sold for the purpose of facilitating the distribution and offering thereof to the common stockholders of Cincinnati. In order to effect such stabilizing purchases, Cincinnati proposes to acquire shares of its common stock on the respective exchanges on which said stock is traded and listed. Cincinnati further proposes to sell the shares of stock so acquired either by sale on the exchanges through brokers with the payment of the usual brokerage commission or by sale on or off the exchanges through brokers or dealers with the payment to them of commissions or allowances or concessions. Cincinnati states that it will at no time acquire a net long position (exclusive of shares presently owned by the company and not being offered to its stockholders) of shares of common stock of Cincinnati in excess of 10 percent of the aggregate number of shares of common stock being offered to its common stockholders. Cincinnati further proposes to purchase the rights evidenced by the warrants to be issued to its common stockholders, through brokers on the exchanges where such rights are to be traded, and to sell through brokers any rights so acquired at prices not to exceed the current price of the rights as quoted on the New York Exchange or to retain such rights at the option of the company.

By the Commission.

[SEAL] ORVAL L. DUBOIS,
Secretary.

[F. R. Doc. 49-3160; Filed, Apr. 22, 1949; 8:57 a. m.]

DEPARTMENT OF JUSTICE

Office of Alien Property

AUTHORITY: 40 Stat. 411, 55 Stat. 839, Pub. Laws 322, 671, 79th Cong., 60 Stat. 50, 925; 50 U. S. C. and Supp. App. 1, 616, E. O. 9193, July 6, 1942, 3 CFR, Cum. Supp., E. O. 9567, June 8, 1945, 3 CFR, 1945 Supp., E. O. 9788, Oct. 14, 1946, 11 F. R. 11981.

[Vesting Order 12988]

FRIEDA SENFT

In re: Estate of and Trust under the will of Frieda Senft, deceased. File D-28-10048, E. T. sec. 14262.

Under the authority of the Trading With the Enemy Act, as amended, Executive Order 9193, as amended, and Executive Order 9788, and pursuant to law, after investigation, it is hereby found:

1. That Catherine Basler, Ida Miller, and Camilla Ganter, whose last known address is Germany, are residents of Germany and nationals of a designated enemy country (Germany);

2. That the children, names unknown, of Irvin Senft, deceased, the domiciliary personal representatives, heirs, next-of-kin, legatees and distributees, names unknown, of Ida Miller, the domiciliary personal representatives, heirs, next-of-kin, legatees and distributees, names unknown, of Camilla Ganter, who there is reasonable cause to believe are residents of Germany, are nationals of a designated enemy country (Germany);

3. That all right, title, interest and claim of any kind or character whatsoever of the persons identified in subparagraphs 1 and 2 hereof, and each of them, in and to the estate of Frieda Senft, deceased, and the trust under the will of Frieda Senft, deceased, is property payable or deliverable to, or claimed by, the aforesaid nationals of a designated enemy country (Germany);

4. That such property is in the process of administration by Clarence H. Hallman, as Executor, acting under the judicial supervision of the Probate Court of Hamilton County, Ohio;

and it is hereby determined:

5. That to the extent that the persons named in subparagraph 1 hereof and the children, names unknown, of Irvin Senft, deceased, the domiciliary personal representatives, heirs, next-of-kin, legatees and distributees, names unknown, of Ida Miller, the domiciliary personal representatives, heirs, next-of-kin, legatees and distributees, names unknown, of Camilla Ganter are not within a designated enemy country, the national interest of the United States requires that such persons be treated as nationals of a designated enemy country (Germany).

All determinations and all action required by law, including appropriate consultation and certification, having been made and taken, and, it being deemed necessary in the national interest,

There is hereby vested in the Attorney General of the United States the property described above, to be held, used, administered, liquidated, sold or otherwise dealt with in the interest of and for the benefit of the United States.

The terms "national" and "designated enemy country" as used herein shall have the meanings prescribed in section 10 of Executive Order 9193, as amended.

Executed at Washington, D. C., on March 24, 1949.

For the Attorney General.

[SEAL] MALCOLM S. MASON,
Acting Deputy Director,
Office of Alien Property.

[F. R. Doc. 49-3178; Filed, Apr. 22, 1949; 9:00 a. m.]

[Vesting Order 13059]

ERNST THORLEUCHTER

In re: Debt owing to Ernst Thorleuchter. F-28-29967-C-1.

Under the authority of the Trading With the Enemy Act, as amended, Executive Order 9193, as amended, and Executive Order 9788, and pursuant to law, after investigation, it is hereby found:

1. That Ernst Thorleuchter, whose last known address is Priesterweg 70, Berlin-Sudende, Germany, is a resident of Germany and a national of a designated enemy country (Germany);

2. That the property described as follows: That certain debt or other obligation owing to Ernst Thorleuchter, by Tobacco Trading Corporation, 1113 West Main Street, Louisville 2, Kentucky, in the amount of $539.17, as of December 31, 1945, together with any and all accruals thereto, and any and all rights to demand, enforce and collect the same,

is property within the United States owned or controlled by, payable or deliverable to, held on behalf of or on account of, or owing to, or which is evidence of ownership or control by, the aforesaid national of a designated enemy country (Germany);

and it is hereby determined:

3. That to the extent that the person named in subparagraph 1 hereof is not within a designated enemy country, the national interest of the United States requires that such person be treated as a national of a designated enemy country (Germany).

All determinations and all action required by law, including appropriate consultation and certification, having been made and taken, and, it being deemed necessary in the national interest,

There is hereby vested in the Attorney General of the United States the property described above, to be held, used, administered, liquidated, sold or otherwise dealt with in the interest of and for the benefit of the United States.

The terms "national" and "designated enemy country" as used herein shall have the meanings prescribed in section 10 of Executive Order 9193, as amended.

Executed at Washington, D. C., on March 29, 1949.

For the Attorney General.

[SEAL] MALCOLM S. MASON,
Acting Deputy Director,
Office of Alien Property.

[F. R. Doc. 49-3179; Filed, Apr. 22, 1949; 9:00 a. m.]

[Vesting Order 13072]

ALICE G. FOSDICK

In re: Trust under the will of Alice G. Fosdick, deceased. File No. D-28-12524, E. T. sec. 16731.

Under the authority of the Trading With the Enemy Act, as amended, Executive Order 9193, as amended, and Executive Order 9788, and pursuant to law, after investigation, it is hereby found:

1. That Rudolf Udo Slattery, whose last known address is Germany, is a resident of Germany and a national of a designated enemy country (Germany);

2. That all right, title, interest and claim of any kind or character whatsoever of the person named in subparagraph 1 hereof in and to the Trust created under the will of Alice G. Fosdick, deceased, is property payable or deliverable to, or claimed by, the aforesaid national of a designated enemy country (Germany);

3. That such property is in the process of administration by United States Trust Company of New York, as Substituted Trustee, acting under the judicial supervision of the Surrogate's Court, County of New York, New York;

and it is hereby determined:

4. That to the extent that the person named in subparagraph 1 hereof, is not

within a designated enemy country, the national interest of the United States requires that such person be treated as a national of a designated enemy country (Germany).

All determinations and all action required by law, including appropriate consultation and certification, having been made and taken, and, it being deemed necessary in the national interest,

There is hereby vested in the Attorney General of the United States the property described above, to be held, used, administered, liquidated, sold or otherwise dealt with in the interest of and for the benefit of the United States.

The terms "national" and "designated enemy country" as used herein shall have the meanings prescribed in section 10 of Executive Order 9193, as amended.

Executed at Washington, D. C., on March 30, 1949.

For the Attorney General.

[SEAL] DAVID L. BAZELON,
Assistant Attorney General,
Director, Office of Alien Property.

[F. R. Doc. 49-3180; Filed, Apr. 22, 1949; 9:00 a. m.]

[Vesting Order 13151]

EDWARD GUNTHER PETERS

In re: Trust under will of Edward Gunther Peters, deceased. File No. D-28-2345 G-1.

Under the authority of the Trading With the Enemy Act, as amended, Executive Order 9193, as amended, and Executive Order 9788, and pursuant to law, after investigation, it is hereby found:

1. That Maria Peter, whose last known address is Germany, is a resident of Germany and a national of a designated enemy country (Germany);

2. That the domiciliary personal representatives, heirs-at-law, next-of-kin, legatees and distributees, names unknown, of Franziska Peter, who there is reasonable cause to believe are residents of Germany, are nationals of a designated enemy country (Germany);

3. That all right, title, interest and claim of any kind or character whatsoever of the persons identified in subparagraphs 1 and 2 hereof, and each of them, in and to the trust created under paragraph II of the will dated July 30, 1930 of Edward Gunther Peters, deceased, and paragraph I of the codicil thereto dated August 15, 1932, and paragraph I of the codicil thereto dated January 18, 1934, and paragraph V of the codicil thereto dated February 13, 1934, presently being administered by The First National Bank of Rome, Rome, Georgia, Trustee,

is property within the United States owned or controlled by, payable or deliverable to, held on behalf of or on account of, or owing to, or which is evidence of ownership or control by, the aforesaid nationals of a designated enemy country (Germany);

and it is hereby determined:

4. That to the extent that the person named in subparagraph 1 hereof and the domiciliary personal representatives, heirs-at-law, next-of-kin, legatees and distributees, names unknown, of Franziska Peter are not within a designated enemy country, the national interest of the United States requires that such persons be treated as nationals of a designated enemy country (Germany).

All determinations and all action required by law, including appropriate consultation and certification, having been made and taken, and, it being deemed necessary in the national interest,

There is hereby vested in the Attorney General of the United States the property described above, to be held, used, administered, liquidated, sold or otherwise dealt with in the interest of and for the benefit of the United States.

The terms "national" and "designated enemy country" as used herein shall have the meanings prescribed in section 10 of Executive Order 9193, as amended.

Executed at Washington, D. C., on April 13, 1949.

For the Attorney General.

[SEAL] DAVID L. BAZELON,
Assistant Attorney General,
Director, Office of Alien Property.

[F. R. Doc. 49-3181; Filed, Apr. 22, 1949; 9:01 a. m.]

[Vesting Order 13127]

KARL LAUTZ

In re: Stock owned by personal representatives, heirs, next of kin, legatees and distributees of Karl Lautz, deceased. F-28-23495-A-1.

Under the authority of the Trading With the Enemy Act, as amended, Executive Order 9193, as amended, and Executive Order 9788, and pursuant to law, after investigation, it is hereby found:

1. That the personal representatives, heirs, next of kin, legatees and distributees of Karl Lautz, deceased, who there is reasonable cause to believe are residents of Germany, are nationals of a designated enemy country (Germany);

2. That the property described as follows: One (1) share of $10 par value common capital stock of Potomac Electric Power Company, Washington, D. C., evidenced by certificate number 58233 registered in the name of Karl Lautz, and presently in the possession of the Attorney General of the United States in account number 28-31170, together with all declared and unpaid dividends thereon,

is property within the United States owned or controlled by, payable or deliverable to, held on behalf of or on account of, or owing to, or which is evidence of ownership or control by the personal representatives, heirs, next of kin, legatees and distributees of Karl Lautz, deceased, the aforesaid nationals of a designated enemy country (Germany);

and it is hereby determined:

3. That to the extent that the personal representatives, heirs, next of kin, legatees and distributees of Karl Lautz, deceased, are not within a designated enemy country, the national interest of the United States requires that such persons be treated as nationals of a designated enemy country (Germany).

All determinations and all action required by law, including appropriate consultation and certification, having been made and taken, and, it being deemed necessary in the national interest,

There is hereby vested in the Attorney General of the United States the property described above, to be held, used, administered, liquidated, sold or otherwise dealt with in the interest of and for the benefit of the United States.

The terms "national" and "designated enemy country" as used herein shall have the meanings prescribed in section 10 of Executive Order 9193, as amended.

Executed at Washington, D. C., on April 12, 1949.

For the Attorney General.

[SEAL] DAVID L. BAZELON,
Assistant Attorney General,
Director, Office of Alien Property.

[F. R. Doc. 49-3183; Filed, Apr. 22, 1949; 9:01 a. m.]

[Vesting Order 13128]

MATHILDA MILTENBERGER

In re: Voting Trust Certificate owned by Mathilda Miltenberger. F-28-25634-A-1, D-1.

Under the authority of the Trading With the Enemy Act, as amended, Executive Order 9193, as amended, and Executive Order 9788, and pursuant to law, after investigation, it is hereby found:

1. That Mathilda Miltenberger, whose last known address is Oberhausen, Rosenstrasse 189, Rhineland, Germany, is a resident of Germany and a national of a designated enemy country (Germany);

2. That the property described as follows: One (1) Voting Trust Certificate for ten (10) shares of Terminals Corporation capital stock, a corporation organized under the laws of the State of Illinois, said Voting Trust Certificate numbered 128, issued by and presently in the custody of the City National Bank and Trust Company of Chicago, 208 South La Salle Street, Chicago 90, Illinois, agent for the Voting Trustees under a voting trust agreement in a plan of reorganization of the aforesaid Terminals Corporation, registered in the name of Mathilda Miltenberger, and any and all rights thereto and thereunder,

is property within the United States owned or controlled by, payable or deliverable to, held on behalf of or on account of, or owing to, or which is evidence of ownership or control by, the aforesaid national of a designated enemy country (Germany);

and it is hereby determined:

3. That to the extent that the person named in subparagraph 1 hereof is not within a designated enemy country, the national interest of the United States requires that such person be treated as a national of a designated enemy country (Germany).

All determinations and all action required by law, including appropriate con-

sultation and certification, having been made and taken, and, it being deemed necessary in the national interest,

There is hereby vested in the Attorney General of the United States the property described above, to be held, used, administered, liquidated, sold or otherwise dealt with in the interest of and for the benefit of the United States.

The terms "national" and "designated enemy country" as used herein shall have the meanings prescribed in section 10 of Executive Order 9193, as amended.

Executed at Washington, D. C., on April 12, 1949.

For the Attorney General.

[SEAL] DAVID L. BAZELON,
Assistant Attorney General,
Director, Office of Alien Property.

[F. R. Doc. 49-3184; Filed, Apr. 22, 1949; 9:01 a. m.]

[Return Order 314]

ROSA PRATOS SIMONELLI

Having considered the claim set forth below and having issued a determination allowing the claim, which is incorporated by reference herein and filed herewith,

It is ordered, That the claimed property, described below and in the determination, be returned, subject to any increase or decrease resulting from the administration thereof prior to return, and after adequate provision for taxes and conservatory expenses:

Claimant, Claim No., Notice of Intention To Return Published, and Property

Rosa Pratos Simonelli, a/k/a Rose Pratos, 228 Lafayette Street, New York, N. Y., Claim No. 4797, December 2, 1948 (13 F. R. 7378); $14,794.64 in the Treasury of the United States. The beneficial interest of Rosa Pratos Simonelli in the following insurance Policies on Life of Pasquale I. Simonelli; Equitable Life Assurance Society, Policy Nos. 1714690, 2713870, 2899280, and 2901183; New York Life Insurance Company, Policy No. 4586630; Metropolitan Life Insurance Company, Policy No. 1641477A; and Travelers Insurance Company, Policy No. 1627262; said policies in custody Real Estate Section, Office of Alien Property, Washington, D. C.; 50 shares NVP capital stock 2380 Arthur Avenue Corp., registered in name of Alien Property Custodian, presently in custody Safekeeping Department, Federal Reserve Bank, New York; 50 shares NVP capital stock Mosholu Realty Corp., Inc., registered in name of Rose Simonelli, a/k/a Rose Pratos. $26,000 6% non-accumulative debenture bonds Mosholu Realty Corp., Inc., registered in name of Rose Pratos Simonelli, presently in possession Custody and Clearance Section, Office of Alien Property, 120 Broadway, New York, New York.

Real property described as follows:

First parcel. That certain lot or parcel of land situate, lying and being in the Borough of the Bronx, County of Bronx, City and State of New York, being known as and by the street number 2394 Belmont Avenue.

Second parcel. That certain plot of land in the Borough of the Bronx, County of Bronx, City and State of New York, being known as and by the street number 652 East 187th Street.

Third parcel. That certain lot or parcel of land in the Borough of the Bronx, County of Bronx, City and State of New York, being known as and by the street numbers 660-662 East 187th Street.

Fourth parcel. All that certain piece or parcel of land situate, lying and being in the Town of Long Branch, in the County of Monmouth, State of New Jersey, being the westerly two-thirds of lot thirty (30) on the map entitled "Map of Section One (1) on the lands of John Hoey, deceased" duly recorded in the County Clerk's Office of said County and bounded and described as follows: Beginning at the southeast corner of Brighton Avenue and Monmouth Place, as shown on said map, running thence (1) southerly along the easterly side of Monmouth Place, three hundred and seven (307) feet and six (6) inches to the northeasterly corner of said Monmouth Place and Brookdale Avenue as shown on said map; thence (2) easterly along Brookdale Avenue seventy-five (75) feet; thence (3) northerly and parallel with Monmouth Place three hundred and six (306) feet be the same more or less, to the southerly side of Brighton Avenue; thence (4) westerly along said Brighton Avenue seventy-five (75) feet to the point or place of beginning.

Appropriate documents and papers effectuating this order will issue.

Executed at Washington, D. C., on April 20, 1949.

For the Attorney General.

[SEAL] DAVID L. BAZELON,
Assistant Attorney General,
Director, Office of Alien Property.

[F. R. Doc. 49-3186; Filed, Apr. 22, 1949; 9:01 a. m.]

JOZO SUGIHARA

NOTICE OF INTENTION TO RETURN VESTED PROPERTY

Pursuant to section 32 (f) of the Trading With the Enemy Act, as amended, notice is hereby given of intention to return, on or after 30 days from the date of the publication hereof, the following property, subject to any increase or decrease resulting from the administration thereof prior to return, and after adequate provision for taxes and conservatory expenses:

Claimant, Claim No., Property, and Location

Jozo Sugihara, 4715; 100 shares of Pacific Trading Company (California) $20.00 par value capital stock registered in the name of the Alien Property Custodian, Washington, D. C., presently in the custody of the safekeeping department of the Federal Reserve Bank of New York.

Executed at Washington, D. C., on April 15, 1949.

For the Attorney General.

[SEAL] DAVID L. BAZELON,
Assistant Attorney General,
Director, Office of Alien Property.

[F. R. Doc. 49-3148; Filed, Apr. 21, 1949; 8:52 a. m.]

HENNY MONHEIMER STERNBERG AND LISELOTTE-LILO STERNBERG

NOTICE OF INTENTION TO RETURN VESTED PROPERTY

Pursuant to section 32 (f) of the Trading With the Enemy Act, as amended, notice is hereby given of intention to return, on or after 30 days from the date of the publication hereof, the following property, subject to any increase or decrease resulting from the administration thereof prior to return, and after adequate provision for taxes and conservatory expenses:

Claimant, Claim No., Property and Location

Henny Monheimer Sternberg, New York, N. Y.; 13340; $1,669.39 in the Treasury of the United States. All right, title, and interest of Henny Monheimer Sternberg in and to a trust created under paragraph "Ninth" of the will of Sara M. Frank, deceased, for the benefit of Henny Monheimer Sternberg for her life, remainder to Lilo Sternberg. One-third of all right, title, and interest in and to a trust created under paragraph "Ninth" of the will of Sara M. Frank, deceased, for the benefit of Heinrich Monheimer and his issue.

Liselotte-Lilo Sternberg, a/k/a Lilo Sternberg, New York, N. Y.; 13340; all right, title, and interest of Lilo Sternberg in and to a trust created under paragraph "Ninth" of the will of Sara M. Frank, deceased, for the benefit of Henny Monheimer Sternberg for her life, remainder to Lilo Sternberg.

Executed at Washington, D. C., on April 19, 1949.

For the Attorney General.

[SEAL] DAVID L. BAZELON,
Assistant Attorney General,
Director, Office of Alien Property.

[F. R. Doc. 49-3188; Filed, Apr. 22, 1949; 9:02 a. m.]

[Return Order 245, Amdt.]

WALTER HINRICHSEN ET AL.

Return Order No. 245, dated January 3, 1949, is hereby amended as follows and not otherwise: By deleting "Selected Works, Orchestra Works, Choral Works", and "Selected Works 1939/40" and substituting therefor "Selected List, Orchestra Works, Choral Works", and "Standard Works 1939/40" under "Property".

All other provisions of said Return Order No. 245 and all actions taken by or on behalf of the Attorney General of the United States in reliance thereon, pursuant thereto and under the authority thereof are hereby ratified and confirmed.

Executed at Washington, D. C., on April 15, 1949.

For the Attorney General.

[SEAL] DAVID L. BAZELON,
Assistant Attorney General,
Director, Office of Alien Property.

[F. R. Doc. 49-3187; Filed, Apr. 22, 1949; 9:02 a. m.]